192

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 95

AIRCRAFT & DIESEL EQUIPMENT CORPORATION, APPELLANT,

vs

MAURICE HIRSCH, E. D. McDOUGAL, JOHN R. PAUL, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

FILED MAY 1, 1946.

SUPREME COURT OF THE UNITED STATES

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VOL. II

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AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Division of General Motors

PART NO	DESCRIPTION	1939	1940	1941			1942	7/31/42	TOTAL				1943	TOTAL
36337	Retainer Rear Breather Screen	90...	418	855	416	1645	1081		4061	1983	416	830		1237
36539	Bracket Fuel Pump Drive Shaft Bearing	418	1040	451					1637	427				427
37126	Power Gear Rear Drive Shaft Gear	490	3987	86	108				4279	3397	108			3505
37617	Washer Lower Finger Driver	3468	4707	1999	1866	3016	3328		10961	6034	1866	1813		9713
19777	Cam Spur Impeller Gear		2695	381	1298				4091	2811	1298			4109
37399	Body Water			2670	1430	1793			1989	2670	1430	1793		5893
41652	Cap Aux. Supr Oil Press Relief				428	506	7467		1302		428	665		1093
41709	Tee Aux. Supr Charger Check Filter				1440	5288			1728		1440	5288		6728
41647	Spring Aux Supr Oil Press Reliev/Valve						1170	1395	2565					
41705	Valve Piston Aux Supr Charger Pressure Relief					3	4	11	18			3	1815	1818
33473	Nut Ign. Cable Tube	1987	4010	1136					1496	1496				1496
33598	Sleeve Rack fire Screw Mount		1966	1309	874				5350	1508	874			2382
33670	Tryol Pressure Reinforcer Nut Plug Lock		210	71					281	131				131
33397	Sleeve Tube Driver Gear			701					701					
41536	Plug Oil Seal					7	15		22			6		6
40516	Body Aux. Supr Oil Press Relief Valve						4	35	39					
40517	Plug Aux Supr Oil Press Relief Valve						4	11	15					
41597	Nut Oil Press Valve Spr Lock						2	8	10					
41649	Valve Aux. Supr Oil Press. Relief.						8	37	45					
41648	Ring Oil Press. Relief Valve Stop													
536.7	Valve Assm Aux Supr Oil Press													
		7108	26344	6459	4390	7513	10819	4695	37555	18157	4390	3755	1815	13154
						3755	1815							
						1884	8864							
						4390								
						3755								
						1815								
						10215								

Allison Div

Customer General Motors Corp

4401 Ravenswood Avenue
CHICAGO, ILL.

Part No. 36337

| | | |

ALLISON DIV.

AIRCRAFT & DIESEL EQUIPMENT CORP.
4501 Ravenswood Avenue
CHICAGO, ILL.

Customer Allison Div General Motors Corp. Part No. 36539

SPACER Fuel Pump Drive SHAFT Bearing

Purchase Order No.	Date	Quantity	Date of Del. Req'd	1940	1939	Remarks	Cancelled
A 3005	5-6-40	1000	5-9-40	3400		76	
A 15407	8-20-40	350	10-19-40	1350		48	
A 20754	10-11-40	600	11-19-40	4160		596	
32753	9-1-39	300	9-14-39		690		
41089	11-7-39	3100	11-20-39		7168		
41980	12-8-39	600	5-28-40	1800		100	
A 5437	5-15-41	1000	5-28-41			794	
		4166		10,460	14168		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Allison div General Motors Corp

Date Rec'd 3/14/46

Drawing Gear & Pump Driver Shaft Cage

| No. | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Roosevelt Avenue
CHICAGO, ILL.

allison Div
Customer General Motors Corp
Date No. 3761X

Washer Dist. Finger Dr

| | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div

Customer General Motors Corp

Part No. 192 v v

Cap Sys. Impulse Eng.

Purchase Order No.	Purchase Order Date	Quantity	Date of 1st Daily	Shipments 1941	12-1-41 to 4-30-42	5-1-42 to 11-30-42	1943	1944	1945	Am Rem	Cancelled
a 390 v	5-15-40	500	6-19-40						537	v v 5	
a 1705d	9-9-41	1000	10-19-40						450		
a v3335	10-17-40	1800	10-30-40						630		
a v4544	10-24-40	500	11-29-40						737	75 1	
B 9v08	3-10-41	1600	3-v-41		985 60					160	
a 31 v85	12-16-40	350	1-9-41	344 00						50	
4v580	12-8-39	1650	4-30-40						548 00		
46931	4-12-41	469	4-16-41	157 97						1 v7	
a 73199	11-13-41	700	12-16-41		1100 00						
78v13	12-15-41	300	12-30-41		110 00						
		8069		3819 7	1096 60				1996 60	1 201	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div
General Motors Corp

Order No. 57399

2 of 2

Body Year

									Over Runs	Cancelled
a63118	8-16-41	11000	10-18-41	2967.04	11-13-97	1493.54			135	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Allison Div General Motors Corp

Cust's No. 41654

CAP Aux Supct Oil Pump Relief
Over Runs Cancelled.

Purchase Order No.	Date	Model No.	Date of Test	2943	2944	2945	2946	2947
B 10v8-V	3-16-44	4700	4-18-44		48675	56550	44679	665
B 4630	11-4-44	6300	11-30-43					1774
		600						

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Allison Div
Hendrick Motor Co

Part No. 41709

JET AUX Supercharger Clutch Roller
Over Run Cam Roller

Shipment Order No.	Date	Quantity	Date of 1st delivery	1941	Shipped to [illegible] 42	[illegible] 42	1943	1944
B10483	3-16-42	1400	4-29-42		1440	55		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div
Gen Motors Corp

Part No. 416 SV

Spring Adv Subst Oil Pump Relief Valve

										Over Runs	Cancelled
PJ #8690	11-14-4V	10000	12-9-4V				417 4V	139.58			700

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div
General Motors Corp.

Item No. 41505

Valve Assembly Safety Check Pressure Relief

| No. | | |

AIRCRAFT-DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div
Customer General Motors Corp

Date No. 33473

Nat. Ind. Cable Tube

No.	From	To	Quantity	Per Day	1938	1939	1940	Over Runs Cancelled
A 3007	5-	6-4	2000	6-8-4			9580	395
A 1433	8-	13-4	10000	8-16-4	3037 40		9360	
A 1538	8-	11-4	5000	10-14-4			20000	1000
A 1151	10	11-4	19000	14-23-4	8378 80			28
38753	9	1-39	800	9-14-39			1287	
4380	12	8-39	2000	12-20-39			44000	4345
			38800		11366 20		44116	1987

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div. General Motors Corp

Sleeve Back fire Screw Right

| | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Corp
Owner General Motors Corp

Part No. 33620

Key Oil Pressure Relief Valve Nut Plug Lock

Engine No.	Engine Type	Overhaul Hrs	Date of Last Overhaul	1942	1943	1944	1945	1946	1947	1948	1949	1950
A-v3-65	10-14-40	3000	12-5-40	9-1-42								1-1000
4-v360	12-8-39	1000	3-23-40									2-1000
		4000		9-1-42								

Duplicate Cancelled
1389
1-39

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div
Customer General Motors Corp
Part No. 33397
Sleeve, Tacho Drive Shaft

Purchase Order No.	Date	Quantity	Date of 2nd order	2343	2345	2346	Quantity Cancelled
A-1891	11-[illegible]-40	1000	1-13-41	3548 48			314
A-1058	1-[illegible]-41	3000	2-11-41	3465 00			3 00
4630	4-[illegible]-41	300	4-16-41	49 14			768
		5300		7012 62			787

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer: Allison Div General Motors Corp

Part No. 41-36

Plug Oil Cool

Over Runs Cancelled

No.	Date	Quantity	Date	1942	1943	1944
C 3456	3-15-43	4000	6-18-43		6V100	3V50
B 10284	3-16-43	2900	4-29-43		107 63	
B 32849	8-19-43	1300	10-16-43			1200
B 41580	11-10-43	600	4-30-43		1V63	1V25
		9600				

7V50
1V25
8V75 3V50

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Allison Div
Customer General Motors Corp

Order No. 4056

Boy Aux Supercharger Relief Valve

							Over Run	Cancelled
C 31VV	3-15-43	600	4-[redacted]-43			$525.00		50
C 410 VV	12-V-43	140	4-[redacted]-44			735.00		
B-60858	1-19-43	1250	V-[redacted]-43			43.00		
		1990				1303.00		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Allison Div / General Motors Corp

Part No. 40517

Plug Aux Supply Cut-Off Pressure Relief Valve
Over Runs Cancelled

Purchase Order No.	Date	Quantity	Date of 1st Dely	1941	Shipments 15-1-41 to 4-28-42	4-29-42 to 11-20-42	1943	1944
C-40VV	12-V-43	36	3-VS-44					1800
B 60859	1-9-43	1450	V-VI-43				40500	9500
		1486					40500	13000

No

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

( ) Customer _____

Part No. #1519

Nut, Oil Press. Valve Spr. Lock
Changed Cancelled
755

Purchase Order No.	Date	Quantity	Date of 1st Ship	Shipments 1941	1942	1943	1944
3455	3-15-43	4000	11-19-43				
C 41v03X	12-8-43	869	4-28-44				
B 49933	1-23-43	1000	8-27-43				
		4069				4000	4976
						4000	3476
						8000	8452

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer General Motors Corp

Part No. 41649

VALVE AUX Supply Check Pump Relief

Purchase Order No.	Purchase Order Date	Quantity	Date of 1st delivery	Shipments	1943	1944	1945	1946
C 6494	4-5-43	2500	8-31-43				6180	18816
D 9074	3-xx-44	1850	4-xx-44					13748
C 44456 X	12-11-43	1301	3-xx-44					10408
		5651					6180	43972

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

allison div
General Motors Corp

Part No. 416 S3

Ring Oil Pressure Relief Valve STOP
Over Runs Cancelled

B-8691	11-14-44	3250	12-9-45				10576	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

allison Div
of General Motors Corp

Date No. 53617

Purchase Order No.	Date	Quantity	Date of Delivery	1942	1943	1944	1945	1946
C 31946	11-6-43	1000	12-17-43					8,500

[fol. 558] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

AFFIDAVIT OF B. CH. KELLEHER IN RESPECT OF UNITED STATES NAVY DEPARTMENT—Filed July 2, 1945

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June 1940, the President and General Manager of Aircraft & Diesel Equipment Corporation; that this affidavit pertains solely to the relations of Aircraft & Diesel Equipment Corporation (hereinafter called "Plaintiff") with the United States Navy Department; that this affidavit is one of a series of affidavits made by this affiant pertaining to the contracts of Plaintiff with purchasers of its equipment; and this affidavit and the exhibits attached thereto are made in support of the position of Plaintiff that a substantial portion of its sales made in Plaintiff's fiscal years ended November 30, 1942 and November 30, 1943, are not subject to renegotiation.

[fol. 559] Affiant further states that:

(1) The photostatic copy of the document attached to this affidavit is a true and correct copy of the supplemental contract dated August 17, 1942, marked "Exhibit N-1" and made a part hereof.

(2) The computation attached hereto has been made under the supervision of affiant, by auditors furnished by Lybrand, Ross Bros. & Montgomery, certified public accountants, from the books of original entry kept and maintained by Plaintiff in the ordinary course of business, and affiant believes all of said computation to be correct.

(3) In affiant's opinion plaintiff had a contract with the United States Navy Department dated May 21, 1941, for the purchase of certain fuel injection pumps; that the supplemental contract, dated August 17, 1942, was supplemental to and a part of the contract of May 21, 1941; that said contract of May 21, 1941, as supplemented by the one dated August 17, 1942, was not subject to renegotiation by

reason of any subsequently enacted statute; and that the basis of said opinion is as hereinafter set forth.

(4) On or about May 21, 1941, Plaintiff entered into a contract with the United States Navy Department, Contract Nos 86075, by which contract the Plaintiff was required to furnish to the United States Navy Department certain fuel injection pumps; that pursuant to the terms and provisions of that contract the plaintiff shipped to the United States Navy Department during the year 1941 a total of $1,178; and during the year 1942 and after April 28, 1942, shipped the additional amount of $64,790 of its said products.

(5) On August 17, 1942, at the request of the United States Navy Department Plaintiff made and entered into a supplemental contract, bearing date, August 17, 1942, [fol. 560] which was supplemental to Contract Nos 86705, dated May 21, 1941, whereby Plaintiff agreed to furnish to the United States Navy Department pumps and injectors to the total amount of $246,064, as is shown by said supplemental contract, a copy of which is attached hereto and made a part hereof, marked "Exhibit N-1".

(6) Pursuant to said supplemental contract dated August 17, 1942, Plaintiff shipped to the United States Navy Department during the year 1942 a total of $71,899.00 of its products, and during the year 1943, shipped, pursuant to such supplemental contract, $174,165.00 of its products.

(7) Affiant is informed and believes that the terms and provisions in respect of renegotiation appearing in the Sixth Supplemental National Defense Appropriation Act of 1942 was and is unconstitutional, null and void, and in view thereof, no renegotiation could be had under and pursuant to provisions of said Act.

(8) In any event, said contract of May 21, 1941, and any supplement thereto did not authorize, direct or permit renegotiation of any sales made in the year 1943 under the terms and provisions of the Renegotiation Act adopted February 24, 1944; that if any form of renegotiation be proper under said contract of May 21, 1941, and the supplemental contract of August 17, 1942, then said renegotiation must be in strict conformance with the terms and provisions of said supplemental contract of August 17, 1942.

(9) No attempt has been made to renegotiate said contract under and in accordance with the terms and provisions relative to renegotiation appearing in said contract of August 17, 1942.

Further affiant saith not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29th day of June, 1945. Clyde F. Devin, Notary Public.

N. S. A. Form 235

CONTRACTOR'S COPY
NOT TO BE RETURNED

This is your official copy of the contract. The ORIGINAL contract only is signed by the parties. Signatures are not required on the contractor's copy.

NOa-86075

Supplementary Contract NOa-86075

CONTRACT

(Supplies)

NAVY DEPARTMENT
BUREAU OF SUPPLIES AND ACCOUNTS

AIRCRAFT & DIESEL EQUIPMENT CORP.
(Contractor)

Contract for EQUIPMENT, ADECO, ETC. Amount, $ 246,064.00

Place RESIDENT INSPECTOR OF NAVAL MATERIAL, ST. LOUIS, MISSOURI

THIS SUPPLEMENTARY CONTRACT, entered into this 17th day of August 194 2, by the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the contracting officer executing this contract, and AIRCRAFT & DIESEL EQUIPMENT CORP. a corporation organized and existing under the laws of the State of DELAWARE ~~a partnership consisting of~~ ~~an individual trading as~~ of the city of CHICAGO 4401 N. Ravenswood Ave., in the State of ILLINOIS hereinafter called the contractor, witnesseth:

WHEREAS, the parties have heretofore entered into a contract numbered NOa-86075 and dated 21 May, 194 1, for the purpose of providing the Navy Department with certain supplies therein described, and

WHEREAS, the Navy Department requires and the contractor is willing to furnish and deliver additional supplies similar to those described in said contract, and

WHEREAS, it is the desire of the parties that said contract, with any amendments thereto, be extended to provide for such additional supplies,

NOW, THEREFORE, under and by virtue of the powers granted by the First War Powers Act, 1941 (P. L. 354, 77th Congress) and by Executive Order No. 9001, dated 27 December 1941, the parties hereto do mutually agree as follows:

ARTICLE 1. Scope of the Supplementary Contract. The contractor shall furnish and deliver the supplies or services described in Schedule A attached hereto for the consideration and upon the terms and conditions in that schedule provided. These supplies or services shall be in addition to all others which the contractor is obligated to furnish the Government.

SCHEDULE A

LOT 2 - SCHEDULE 900-7014

Naval Supply Account Fund, Class 401
Bureau: Ships

Appn.Alt.Chg.: 17X0603, Increase and Replacement of Naval Vessels (CSM) and project orders of the vessels concerned.

Purpose: Additional Equipment for six cylinder 12-1/2 by 13 Adeco type engines being manufactured by Busch.

To be delivered, all transportation charges paid, to the Resident Inspector of Naval Material, c/o Busch-Sulzer Bros. Diesel Engine Company, St. Louis, Missouri, by January 1, 1943.

Item		Number	Unit Price (each)	Total
1.	ADECO individual fuel injection pumps	960	$95.00	$91,200.00
2.	Fuel Injectors, complete	1248	80.00	99,840.00
3.	Special Tools, required: Discharge Valve Pullers	32 (sets)	5.00 (per set)	160.00
4.	Fuel Injector Needles and Guides (Nozzles)	1152 (number)	25.00 (each)	28,800.00
5.	Fuel Pump delivery Valves and Seats	288	10.50	3,024.00
6.	Fuel Pump Plungers and Barrels	576	40.00	23,040.00
			TOTAL	$246,064.00

All shipping packages or containers must be marked with the contract number, preceded by the symbol letters shown, and the item numbers contained therein. When material for more than one contract or order is packed in any single container, all contracts or orders and item numbers contained therein must be shown.

The contractor in performing the work required by this Supplementary Contract shall not discriminate against any worker because of race, creed, color, or national origin. The contractor further agrees that each subcontract made under this contract will contain a similar provision with respect to non-discrimination.

Army and Navy Munitions Board Preference Rating A-1-b, Code No. 5 and End Use Classification USM 2.70, is hereby assigned to this Supplementary Contract and all subcontracts entered into to effect the procurement of materials necessary for the execution of this Supplementary Contract.

All shipping packages or containers must be marked with the contract number, preceded by the symbol letters shown, and the item numbers contained therein. When material for more than one contract or order is packed in any single container, all contracts or orders and item numbers contained therein must be shown.

The contractor in performing the work required by this Supplementary Contract shall not discriminate against any worker because of race, creed, color, or national origin. The contractor further agrees that each subcontract made under this contract will contain a similar provision with respect to non-discrimination.

The Contractor represents and stipulates as follows:

a. The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

b. All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract; Provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

c. No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor; Provided, however, that the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of Section 7 of an Act entitled "The Fair Labor Standards Act of 1938": Provided, further, that in the case of such an employer, during the life of the agreement referred to, the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any one week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 8 in any 1 day or in excess of 40 in any one week.

d. No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles or equipment included in the contract.

e. No part of the contract will be performed nor will any of the materials, supplies articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the state in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

f. Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $10.00 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or under-payment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, that no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

g. The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

h. The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of $10,000.00.

1130 P

SECTION Renegotiation Pursuant to Section 403 of the 4th Supplemental National Defense Appropriation Act, 1942, Approved 28 April 1942.

(a) Upon the written request of the Secretary of the Navy, at such period or periods when in the judgment of the Secretary of the Navy the profits accuring to the contractor under this contract can be determined with reasonable certainty, the contract price shall be renegotiated to eliminate therefrom such amount as is found as a result of such renegotiation to represent excessive profits.

(b) There shall be retained by or repaid to the Government (1) the amount of the contract price found as a result of such renegotiation to represent excessive profits to the contractor, and (2) an amount of the contract price equal to the amount of the reduction in the price of any subcontract hereunder pursuant to the renegotiation of such subcontract as provided in paragraph (c) hereof, not otherwise repaid to the Government, to the extent of any amount unpaid under such subcontract by the contractor to the subcontractor.

(c) Any subcontract entered into under this contract for an amount in excess of $100,000 shall contain substantially the following provisions:

(1) Upon the written request of the Secretary of the Navy, at such period or periods when in the judgment of the Secretary of the Navy the profits accruing to the *_____ under this contract can be determined with reasonable certainty, the contract price shall be renegotiated by the Secretary of the Navy and *_____, to eliminate therefrom such amount as is found as a result of such renegotiation to represent excessive profits.

(2) There shall be retained by **_____ or repaid to the Government at the direction of the Secretary of the Navy any amount of the contract price found as a result of such renegotiation to represent excessive profits to *_____.

(3) **_____ is hereby relieved from any liability to *_____ on account of any amount retained or repaid pursuant to paragraph (2).

(d) The term "Secretary of the Navy" for the purposes of this article shall be deemed to include any authorized representative of the Secretary.

(e) The contractor agrees that it will keep records and books of account showing the cost of performing this contract, in accordance with sound accounting practice. The contracting officer and his authorized representatives shall at all reasonable times have access to all records, books of account and original evidences of cost of the contractor pertaining to this contract. The contractor shall preserve all such records, books of account and original evidences of cost for a period of three years after the completion or other termination of this contract and, if it is determined to renegotiate the price herein, for such additional period as may be necessary.

*Indicate Subcontractor
**Indicate Contractor

975-P

ARTICLE 2. Provisions of Original Contract. Except as otherwise provided in Schedule A, all the provisions of the original contract with any amendments thereto, to the extent they are not inconsistent with the terms of this agreement, shall have full force and effect with respect to the supplies or services which constitute the subject of this Supplementary Contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Purchasing Officer,
Bureau of Supplies and Accounts,
Navy Department

Two witnesses:

_____

_____

Avco

Contractor.

B. A. Littler, Pres.

4401 N. Ravenswood Chgo.

(Business address)

I, M. V. Emerson, certify that I am the Secretary of the corporation named as contractor herein; that B. A. Littler who signed this contract on behalf of the contractor, was then Pres of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

_____ Corporate Seal

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Navy Dept Bureau of Supplies

Part No. _____

1 of 1

No.	Date	Quantity	Last Delivery	1941	1942	1943	1944	TOTAL	SHIPMENTS ON ORDER: REQUIRED 1941	1942	1943	TOTAL
NOS-8607E Complete Service tools required discharge valve Pullers	5-16-41	56	8-18-41	1178.00	44790.00			45968.00		5179.00		5179.00
	5-16-41	16	12-31-42		80.00		640.00	720.00	90.00		80.00	
NOS-8607-S-Supply Adeco individual Fuel injection pumps	8-17-42	960	10-19-42		47595.00	43605.00		91200.00				
Fuel injectors Complete	8-17-42	1428	10-27-42		17280.00	8756.00		9984.00				
Special Tools required Discharge valve Pullers	8-17-42	32	1-28-43			160.00		160.00				
Fuel injector needle & Guide (No 33)	8-17-42	1152	10-31-42		14000.00	7280.00		21280.00				
Fuel pump delivery valves and seats	8-17-42	288	10-31-42		3024.00			3024.00				
Fuel pump Plungers & Barrels	8-17-42	576	1-25-43			28044.00	23760.00	51804.00				
PH-42	5-15-41	75		431.50				431.50				
" NW-NW3	3-9-42	170	2-15-42		3450.00	6325.00		9775.00		3450.00	6325.00	9775.00
" 18093	7-10-42	185	7-20-42		10637.50			10637.50				
				431.50	3450.00	15325.00	23760.00	33966.50		3450.00	6325.00	9775.00
						7115.00						
						8437.50						

[fol. 568] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

AFFIDAVIT OF B. CH. KELLEHER IN RESPECT OF WOODWARD GOVERNOR COMPANY—Filed July 2, 1945

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June, 1940 the President and General Manager of Aircraft & Diesel Equipment Corporation; that this affidavit pertains solely to the relations of Aircraft & Diesel Equipment Corporation (herein called "Plaintiff") with Woodward Governor Company (herein called "Woodward"), and is one of a series of affidavits made by this affiant pertaining to the contracts of Plaintiff with purchasers of its equipment; that this affidavit and the exhibits are made in support of the position of Plaintiff that a substantial portion of its sales made in the fiscal years ended November 30, 1942, November 30, 1943 and November 30, 1944 are not subject to renegotiation.

Affiant states that:

[fol. 569] (1) In affiant's opinion, Plaintiff had a contract with Woodward to furnish drive and idler gears necessary to complete its governors for variable pitched propellors required by the manufacturers of the Hamilton propellor, and that such opinion is based upon the following facts:

(2) In the year 1940, prior to the beginning of the Plaintiff's present management, Woodward had severed all business relations with the Plaintiff, because of the poor quality of the Plaintiff's products.

(3) During the month of February, 1941, A. W. McDonald, representing Woodward, came to the office of the Plaintiff and discussed the possibility of Plaintiff doing certain work for Woodward. McDonald pointed out that Plaintiff's performance had theretofore been unsatisfactory to Woodward; that if he placed orders with Plaintiff he expected performance on the date specified, and, to some extent, his personal reputation was involved because he

had been warned of Plaintiff's previous record of non-performance.

(4) Affiant assured McDonald that he would take no orders for any work which could not be performed by Plaintiff in accordance with specifications and on time.

(5) Thereafter business relations between Woodward and Plaintiff were resumed on the basis of the Plaintiff being on trial.

(6) On March 5, 1941 Woodward addressed a letter to Plaintiff in respect of Plaintiff's methods, by which the breaking of corners of gears was obviated. A copy of such letter is attached hereto marked "Exhibit W-1".

[fol. 570] (7) On March 12, 1941 Woodward wrote a letter thanking Plaintiff for its cooperation in respect of buffing and polishing techniques which it had demonstrated to Woodward, a copy of which letter is attached hereto, made a part hereof, and marked "Exhibit W-2".

(8) Thereafter in March, 1941 Woodward, by McDonald advised Plaintiff that it would require idler and drive gears from Plaintiff, beginning in July or August, 1941, with monthly shipments of 1000 of each, increasing to 3000 and 4000 of each per month. Woodward requested Plaintiff to determine with definiteness whether Plaintiff could furnish these parts in quantities requisite to meet such requirements. This affiant, for Plaintiff, agreed to meet the requirements of Woodward in respect of such gears, known to the parties as drive gear No. 53940, later changed to No. 54695, and idler gear No. 50659, later changed to No. 53896. It was agreed by McDonald on behalf of Woodward and by this affiant on behalf of Plaintiff that Plaintiff should be the supplier of Woodward for such gears and such other parts as Woodward might from time to time require and which Plaintiff could make.

(9) On May 9, 1941 Woodward sent Plaintiff a letter enclosing prints, route sheets and process drawings relating to parts Nos. 53940 and 50699, and indicating that Plaintiff was to make these gears. A copy of this letter is attached hereto marked "Exhibit W-3". After much planning, engineering and processing studies, on May 23, 1941 prices were determined in accordance with "Exhibit W-4" attached hereto. On the same day a letter of transmittal of Exhibit W-4, which is marked "Exhibit W-5", was sent

by Woodward to Plaintiff, which letter indicated that Plaintiff would be expected to furnish such gears in in-
[fol. 571] creasing amounts. From then on Plaintiff during all the years 1941, 1942, 1943 and 1944 furnished Woodward such gears, Nos. 53940 and 50659, and modifications thereof, which were given Nos. 54695 and 53896, in accordance with the agreement.

(10) On December 8, 1941 Woodward addressed a letter to Plaintiff, a copy of which is attached hereto and made a part hereof, marked "Exhibit W-6". In this letter Woodward agreed to absorb the cost of tooling.

(11) On December 19, 1941 Woodward wrote Plaintiff stating that Hamilton Standard Propellors had been requested by the War Department to secure from sub-contractors information in respect of their ability to go on a twenty-four hour day, seven day week basis. A copy of this letter is attached hereto and made a part hereof, marked "Exhibit W-7". Affiant told Woodward that Plaintiff could do it when required.

(12) During all the years 1941, 1942 and 1943 Plaintiff made gears for Woodward as rapidly as it could, without regard to any specific orders therefor, with the understanding between Woodward and Plaintiff that so-called purchase orders were actually shipping instructions; that during many periods Plaintiff had in the process of manufacture gears far beyond the actual so-called purchase orders which had been sent by Woodward to Plaintiff. This procedure continued during all such years, limited only by the War Production Board's Controlled Materials Plan, to which Plaintiff adhered after its promulgation.

(13) Affiant says that both Plaintiff and Woodward understood and agreed that so long as Woodward continued
[fol. 572] to supply Hamilton Standard Propellors with governors, Plaintiff was to supply Woodward with its idler and drive gear requirements; that both Woodward and Plaintiff understood and acted upon such agreement, and each considered such agreement binding upon the other. To the end that this agreement might be performed rigorously, Woodward loaned machinery and machine tools to Plaintiff and furnished materials, tools and information in respect of methods, and Plaintiff provided Woodward with such information, methods and processes as might be helpful to Woodward, arranged its shop, hired

skilled workers, technicians, keymen and ordinary workmen to carry out its agreement to keep Woodward supplied to the extent of 2000 to 4000 of each of the units per month, as Woodward might require.

(14) Affiant further says that so far as he remembers, Woodward never requested Plaintiff to sign any separate agreement in respect of so-called renegotiation.

Further affiant saith not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29th day of June, 1945.

Clyde F. Dewitt, Notary Public.

ESTABLISHED 1870
INCORPORATED 1902

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

TELEPHONE
MAIN 1457

3-6

W-1

WOODWARD

WOODWARD GOVERNOR COMPANY

MANUFACTURERS OF

HYDRAULIC GOVERNORS FOR PRIME MOVERS

ROCKFORD, ILLINOIS March 5, 1941

EASTERN OFFICE
501 FAIRWAY ROAD
RIDGEWOOD, N. J.
TELEPHONE RIDGEWOOD 6-2838

SUBJECT

Aircraft & Diesel Equipment Corporation
4401 N. Ravenswood Avenue
Chicago, Illinois

Attention Mr. H. E. Davis

Gentlemen:

Your letter of February 21 addressed to Mr. McDonald was referred to me, as I have been seeking information in regard to the breaking of corners on gears by the use of buffing or polishing equipment. Mr. McDonald advises that your company is doing an exceptionally good job and suggests that it would be well for us to investigate your methods. He informed me that you had kindly consented to our sending a couple of men to your plant to observe and study the equipment you use and the methods employed on various gears.

We are happy to take advantage of this opportunity and wish to advise you that our Mr. Reskis and Mr. Legge will arrive in Chicago sometime Friday morning to spend the day with you in an effort to learn all that they can that may be of assistance to us in a very difficult problem in gear finishing.

May we thank you in advance for your assistance and cooperation for permitting us this opportunity to overcome our difficulties through your methods.

ED-1870
TED 1902

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

TELEPHONE
MAIN 145

WOODWARD

WOODWARD GOVERNOR COMPANY

MANUFACTURERS OF

HYDRAULIC GOVERNORS FOR PRIME MOVERS

ROCKFORD, ILLINOIS

EASTERN OFFICE
61 FAIRWAY ROAD
RIDGEWOOD, N. J.
TELEPHONE RIDGEWOOD 6 2038

March 12, 1941.

SUBJECT Buffing Operation on Drive Gears.

Aircraft and Diesel Equipment Corporation
4401 North Ravenswood Avenue
Chicago, Illinois

Attention: Mr. H. E. Davis.

Gentlemen:

I am taking this opportunity to thank you kindly for your splendid cooperation in our recent buffing operation on drive gears. Our customer has OK'd the samples and it looks as though we are going to have a better product with less working hours.

Hoping to be of some assistance to you in the future, I remain,

Yours very truly,

WOODWARD GOVERNOR COMPANY

P p: A. W. McDonald

AWMcDonald:ms

ESTABLISHED 1870
INCORPORATED 1902

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

W-2

TELEP
MAIN

WOODWARD

WOODWARD GOVERNOR COMPANY

MANUFACTURERS OF

HYDRAULIC GOVERNORS FOR PRIME MOVERS

ROCKFORD, ILLINOIS May 9, 1941.

EASTERN OFFICE
501 FAIRWAY ROAD
RIDGEWOOD, N. J.
TELEPHONE RIDGEWOOD 6-2830

SUBJECT Prints of Drive Gear 53940 and Idler Gear 50659.

Diesel Equipment Corporation
4401 North Ravenswood Avenue
Chicago, Illinois

Attention: Mr. B. C. Kelleher.

Gentlemen:

Enclosed you will find prints, route sheets, and process drawings of drive gear 53940 and idler gear 50659. Our representative, Mr. McDonald, has requested that we forward these to you. In checking over the route sheets, we find that in the column for "Hours allowed per piece", we have instead given the number of pieces per hour which should be produced. If you are going to use these route sheets to plan the time required for production, you will undoubtedly wish to figure the time per piece and substitute it in place of the figures we have shown. If you have any questions concerning the print specifications, route sheets, or process drawings, please let us know and we will do everything we can to enable you to start production on these items.

Under seperate cover we are sending you one sample each of a drive gear 53940 and an idler gear 50659.

Yours very truly,

WOODWARD GOVERNOR COMPANY

Per: H. M. Greenman

HMGreenman:ms
Enc.

MANUFACTURERS OF
DRASTIC GOVERNORS
FOR PRIME MOVERS
PHONE MAIN 1431

WOODWARD GOVERNOR COMPANY

Rockford, Ill.

PURCHASE ORDER

E.1 W-4

Cards 5-2
Letter 5-27

cc: Hollister
Dunn
Tenney

Aircraft and Diesel Equip. Corp.
4401 North Ravenswood
Chicago, Illinois

Date May 23, 1941

Via

PUT THIS NUMBER ON ALL INVOICES AND PACKAGES. INVOICE IN DUPLICATE.

Req. No. 3519
Dept. No. 10..
Acct. No.

	QUANTITY	DESCRIPTION	PRICE	AMOUNT
	3,000	HSP 50659 Idler Gear- Job 4702 - Sho 8193	4.65ea.	-
	3,000	HSP 53940 Drive Gear- Job 4703 - Sho 8194	11.00ea.	plus tooling
		We are to furnish forgings.		
		REJohnson:mj		
		Priority Rating A-1-c		
		Company has letter		

NOTICE—Kindly acknowledge receipt of this order by our number and advise when you will ship. Our number this order must appear on your invoice and package.

WOODWARD GOVERNOR COMPANY

By R E Johnson

"Exhibit W-4"

ESTABLISHED 1870
INCORPORATED 1908

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

W - 3

TELEPHONE
MAIN 1487

WOODWARD

WOODWARD GOVERNOR COMPANY

MANUFACTURERS OF

HYDRAULIC GOVERNORS FOR PRIME MOVERS

ROCKFORD, ILLINOIS

EASTERN OFFICE
501 FAIRWAY ROAD
RIDGEWOOD, N. J.
TELEPHONE RIDGEWOOD 6-2030

Copies Lasley 5/24/41
Keller
Murnan
Davis
Jervey
Lewis
Iss

SUBJECT

May 23, 1941

Aircraft and Diesel Equip. Corp.
1401 North Ravenswood
Chicago, Illinois

Gentlemen:

We are enclosing our purchase order E 1 for 3,000 each of our Idler Gear and Drive Gear in accordance with the understanding reached with our Mr. McDonald. This is a preliminary order, and there will be substantially increased orders for these parts when our new program gets fully under way.

We have a substantial stock of forgings on hand and will be in a position to furnish any quantity you require upon short notice.

It is our understanding that you have a complete set of prints and route sheets. However, should there be any other information along this line that you require, please let us know by return mail. We would be pleased to have you come out to our shop and make a survey of our method of producing these parts if this would be of any help to you.

Yours very truly,

WOODWARD GOVERNOR COMPANY

R. E. Johnson

REJohnson:mj

ISHED 1870
RATED 1902

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

TELEPH
MAIN

WOODWARD

WOODWARD GOVERNOR COMPANY

MANUFACTURERS OF

HYDRAULIC GOVERNORS FOR PRIME MOVERS

ROCKFORD, ILLINOIS

EASTERN OFFICE
561 FAIRWAY ROAD
RIDGEWOOD, N. J.
TELEPHONE RIDGEWOOD 6-2838

SUBJECT Please mark reply for attention of writer.

December 8, 1941

Aircraft & Diesel Equipment Corp.
4401 North Ravenswood Avenue
Chicago, Illinois

Gentlemen:

In passing your invoices for the tooling up for production of our Drive and Idler Gears the accounting department raised the question as to where the title to these tools and fixtures would rest.

You will recall that it was our original intention that the duplication of jigs and fixtures was to be paid for and title was to rest in some agency of the U.S. Government.

Because of the red tape involved, it has been decided that Woodward Governor would absorb the cost of this tooling. Will you, therefore, mark your records to show that title will rest in Woodward Governor Company.

Very truly yours,

WOODWARD GOVERNOR COMPANY

Per. R E Johnson

REJohnson:mj

DEC 10 40

J-7

BLISHED 1870
PORATED 1902

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

TELEPHON
MAIN

WOODWARD

WOODWARD GOVERNOR COMPANY

MANUFACTURERS OF

HYDRAULIC GOVERNORS FOR PRIME MOVERS

ROCKFORD, ILLINOIS

EASTERN OFFICE
561 FAIRWAY ROAD
RIDGEWOOD, N. J.
TELEPHONE RIDGEWOOD 6-2038

SUBJECT Please mark reply for attention of writer.

December 19, 1941

Aircraft & Diesel Equipment Corp.
4401 North Ravenswood Avenue
Chicago, Illinois

Gentlemen:

There has been reffered to us by Hamilton Standard Propellers a request from the War Department that we secure the following information from our sub-contractors.

> The number of man hours per week, and the number of shifts per day you are now operating on our work; and the length of time it will take to step your employement up to 24 hours a day seven days a week should this eventuallity become necessary.

We would like too an estimate of the increase in cost which you would incur, should it be necessary to go on a 24 hour a day seven day basis.

We would appreciate your letting us have this information as early as possible, so that we might have this information available for the War Department.

Very truly yours,

WOODWARD GOVERNOR COMPANY

Per. R E Johnson

REJohnson:mj

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

WOODWARD

SHIPMENTS

SHIPMENTS IN ORDER Received Prior to 4/1/1944

PART No.	DESCRIPTION	1941	1942	1943	1944	TOTAL	1941	1942	1943	TOTAL
50659-D	Idler Gear	3397 90	2436 80	1627 80	2169 80	9631 30	3397 90	2408 80	5795 10	11652 80
53940	Drive Gear	5163 00	5946 00	3017 00	1797 00	15923 00	5163 00	5946 00	7916 00	18700 00
54695	Drive Gear				2154 50	2154 50				
53896	Idler Gear				1378 96	1378 96				
54408					6217 00	6217 00				
54489			76 80		1034 90	1111 70		76 80		76 80
		8560 90	8448 60	4644 80	15931 16	37585 46	8560 90	8448 60	13711 10	30720 60
				1333 19 10						
				3377 30						

Part No 50659-D and 53896 is an idler gear, part 53896 is practically the same as part 50659-D as there was slight engineering change.

Part No 53940 and 54695 is a drive gear, part 54695 is practically the same as part 53940 as there was slight engineering change.

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Woodward Part No. 50659-D 1 of 7

IDLER GEAR.

Purchase Order No.	Date	Quantity	Part of 1st Order	Shipments 1941	12-1-41 4-28-42	11-30-42	1943	1944
E-1	5-20-41	3000	7-23-41	1553565				
DE 3	9-8-41	3000	10-8-41	1864	465			
E 51	11-27-41	6000	12-10-41		1432	15	93	
E 64	1-1-42	6000	8-19-42				2790	
F 137	7-1-42	12000	8-7-42				6611	1696
D 5806	3-16-42	6000	4-27-42				2936	
D 7366	5-1-42	9000	6-20-42				4046	
				3397	1897	15	16736	1696

Orrion
3x1
966
W-1

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Woodward

Part No. 53940

Drive Gear

3 of 7

| | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Woodward

Part No. 54695

Purchase Order No.	Date	Quantity	Date of 1st daly	Shipments 1941	12-1-41 to 4-30-42	5-1-42 to 11-30-42	1943	1944
2365	9-17-42	500	2-18-43				4750	
8401	2-10-43	4000	2-26-43				17750	
10999	4-26-43	3000	7-19-43				20500.00	
9619	3-16-43	1000	6-17-43				13500.00	
13158	6-23-43	2000	10-19-43				19750.00	
11907	5-21-43	3000	7-13-43				28500.00	
14288	7-16-43	3000	11-16-43				28500.00	
15348	8-26-43	3000	12-17-43				20668.50	19831.50
17300	10-18-43	3000	12-31-43					
17306	10-18-43	3000	1-19-44					
							154850	19831.50

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Woodward

Part No. 53896

IDLER GEAR

No.	Date	Quantity	Date of Test	3968	3968	3968	3968	3968	3968
2076	9-2-43	60	12-1-43	3000					
8407	4-10-43	4000	3-4-43	2403					
9680	3-16-43	1000	6-17-43	0000					
10998	4-26-43	3000	6-17-43	18000					
11987	5-22-43	3000	7-20-43	18000					
13706	6-21-43	3000	8-26-43	18000					
13814	7-10-43	3000	9-13-43	16060					
14701	7-24-43	3000	10-7-43	18000					
17495	10-18-43	3000	11-18-43	14104	3894				
17496	10-18-43	3000	12-13-43		18000				
17497	10-18-43	3000	2-28-44		18000				
17498	10-18-43	3000	3-4-44		18000				
17499	10-18-43	3000	3-24-44		18000				
25116	4-3-44	3000	4-21-44		18000				
25117	4-6-44	3000	4-14-44		18000				
				197196	111894				

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Woodward

Cust's No. 58708

	11-[illegible]-[illegible]	1000	1-[illegible]-43					[illegible]00		
	12-8-[illegible]	[illegible]000	12-16-43					93[illegible]00		
	[illegible]-[illegible]-43	2000	[illegible]-[illegible]-43					[illegible]7[illegible]0		
F	3-6-43	1000	[illegible]-[illegible]-43					[illegible]0[illegible]7		
F	[illegible]7-43	[illegible]00	8-3-43					19[illegible]00		
F	6-12-43	8[illegible]0	8-31-43					7787	763[illegible]0	
F	12-2-43	16[illegible]0	2-18-44							
								6[illegible]1700	763[illegible]	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Woodward

Part No. 57489

7 of 7

Mil Spline Coupling

3-2051	11-5-43	46	11-7-43					
2 2068	11-8-43	67	11-15-43					
D 3978	1-5-44	97	1-21-44					
17643	10-12-43	1016	10-28-43					
12 358	6-3-43	1000	6-?-43					
12 994	9-10-43	874	9-11-43					

[fol. 587] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

AFFIDAVIT OF B. CH. KELLEHER IN RESPECT OF HUDSON MOTOR COMPANY AND ITS SUCCESSOR WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, STUDEBAKER CORPORATION (Aviation Division) AND GENERAL MOTORS CORPORATION (Packard Electric Division)—Filed July [redacted], 1945

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June, 1940 the President and General Manager of Aircraft & Diesel Equipment Corporation; that this affidavit pertains to the relations of Aircraft & Diesel Equipment Corporation (herein called "Plaintiff") with Hudson Motor Car Company and its successor from and after October 27, 1943, Westinghouse Electric & Manufacturing Company, and Studebaker Corporation, Aviation Division, and Packard Electric Division of General Motors Corporation; that this [fol. 588] affidavit is one of a series of affidavits made by this affiant pertaining to the contracts of Aircraft & Diesel Equipment Corporation with purchasers of its equipment; that this affidavit and the schedule attached are made in support of the position of Plaintiff that a substantial portion of its sales made in the fiscal years ending November 30, 1942 and November 30, 1943, are not subject to renegotiation.

Affiant states that:

(1) The sales made to the above named Hudson Motor Car Company and its successor Westinghouse Electric & Manufacturing Company, the Studebaker Corporation (Aviation Division) and General Motors Corporation (Packard Electric Division) aggregate not to exceed the sum of $406,684.75 in the fiscal year of Plaintiff ended November 30, 1943.

(2) Time has not permitted this affiant to search the files of the Plaintiff to secure letters and documents supporting the existence of a contract, as has been done with other divisions of General Motors Corporation and Fairchild Aviation and Airplane Company (Ranger).

(3) In general, the sales made to Hudson Motor Car Company and its successor, Westinghouse Electric & Man-

ufacturing Company, Packard Electric Division of General Motors Corporation, and Studebaker Corporation, Aviation Division, followed the same general plan as that of other divisions of General Motors Corporation; namely, that Aircraft & Diesel Equipment Corporation was advised from time to time as to increased schedules of said companies, and upon receipt of such information arranged its machinery, personnel and facilities in such a way as to meet said increasing schedules, and so advised said purchasers.

[fol. 589] (4) The computations attached hereto and made under the supervision of this affiant by auditors furnished by Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, from the books of original entry kept and maintained by Plaintiff in the ordinary course of its business, are believed by affiant to be correct. (Such computations are attached hereto and marked "Exhibit—General 1", "Exhibit—General 2" and "Exhibit—General 3").

(5) In affiant's opinion Plaintiff had a contract with each of the above named corporations for the purchase of aircraft parts prior to April 28, 1942, and at all times thereafter, and that said contracts were not subject to renegotiation by reason of any subsequently enacted statute.

(6) In affiant's opinion each of said above named corporations relied upon Plaintiff to supply the parts then being made by Plaintiff for each of the said corporations in the amounts necessary to meet the increased requirements of said corporations, and all as a part of contracts with said corporations which said contracts were all made prior to April 28, 1942, and that if afforded an opportunity, supporting letters, telegrams and documents could be exhibited establishing the existence of such contracts.

(7) This affiant believes that the sales made to Hudson Motor Car Company and its successor Westinghouse Electric & Manufacturing Company, the Studebaker Corporation, and Packard Electric Division of General Motors Corporation were all sales not subject to renegotiation, such sales having been made upon a contract or contracts with said purchasers prior to April 28, 1942; and that, in addition, affiant was informed and believed that the provisions for renegotiation appearing in the Sixth Supple-

[fol. 590] mental National Defense Appropriation Act of

1942 were and are unconstitutional and void, and no renegotiation could be had under or pursuant to the provisions of said act.

(8) In any event, said sales made during the year 1943 were not subject to renegotiation under the terms and provisions of the Renegotiation Act adopted February 24, 1944.

Further affiant saith not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29th day of June, 1945.

Clyde F. Dewitt, Notary Public.

Hudson Motor Car Co

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

1 of 20

SHIPMENTS

SHIPMENTS ON ORDERS RECEIVED

Part No	Number Final Order	Description	1942	1943	Nov 30, 1943	Nov 30, 1944	May 31, 1945	Total	Prior to 1941	1941 Prior to Effective Order	1941 Subsequent to Effective Order	1942	Total	After Cancellation
1063	60229 D	Axis												
1065	57570-3 N	Plunger												
1069	57570-2 N	Plunger												
1070	60230 D	Plunger												
1071	60235 D	Plunger												
1075	60238 D	Magazine Interlock Rod												
1080	60234 D	Stop												
1207	60229 D	Axis Pilot												
1209	60227 D	Axis Pilot												
1210	60228 D	Axis Pilot												
1212	63797 D	Pinion Plunger Rack												
1213	60229 D	Plunger												
1214	60226 D	Axis Pilot												
1217	60231 D	Pilot												
1224	60227 D	Axis Pilot												
1225	63797 D	Trigger Arm												
1246	60240 D	Spring Case												
1319	60227 D	Axis Pilot												
1320	60225 D	Set Screw Nut												

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Part No. OE 1063

Purchase Order No.	Date	Quantity	Date of 1st dely	Shipments 1941	12-1-41 to 4-25-42	4-26-42 to 11-30-42	1943	1944	Overrun Cancelled		Location of Load
60379-P	10-24-41	2100	11-1-41	2211	17586				151		
64453-P	4-17-42	2100	6-17-42			103635			105		Misc
64489-P	4-28-42	2000	8-26-42			98700			100		Misc
73511-P	10-26-42	4320	12-29-42				21699		987		Misc
78581-P	3-10-43	4321	3-20-43				17321	2338	31	863	
80881-P	5-20-43	2000	9-29-43				19500				Misc
66590-P	8-3-42	4500	9-8-42			43144			56		Misc
10176							1195				
				2211	17586	41534	50149				

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson Part No. DE 1065

Plunger

Purchase Order No.	Date	Quantity	Date of 1st Delivery	Shipments 1942	1943	1944	1945	Overrun Cancelled	Location of Card
64452-D	4-17-42	2100	4-24-42		11664	9456			M.S.C.
64489-D	4-28-42	2000	6-20-42			10000			M.S.C.
73511-D	10-26-42	3500	2-22-43				35000		M.S.C.
80888-D	5-20-43	2400	9-20-43				10816	408	M.S.C.
CANCELLED	11-13-41	25	11-24-41	2083					M.S.C.
60330-D	10-25-41	2100	11-12-41	405	10344			710	M.S.C.
65697-D	5-19-42	5000	6-20-42			11976	38000		M.S.C.
76386-D	1-20-43	3500	2-25-43				34000		M.S.C.
80849-D	4-16-43	1034	4-29-43				9144		M.S.C.
10133-D	11-22-43	4171	12-20-43					41376	
				3993	14018	19056	97456		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Parts No. OE 1069

Plunger

Location of Cord

Over run Control

No.	Date	Quantity	Date of last sale	1942	1943	1944	1945	1946					
64489-P	4-28-42	7000	6-20-43				75484			68			14.5 Q
75570-N	11-13-41	M	11-24-41	9836									14.5 L
60331-P	11-25-41	2100	11-27-41	7511	1101								
61636-P	1-28-42	9200	3-24-43		16303	2993							
66590-P	3-3-42	5910	6-21-43			18070	24796						14.5 Q
73511-P	10-26-42	9000	12-18-43				12382			243			14.5 Q
76374-P	1-15-43	9000	3-26-43				12413				924		
80888-P	4-20-43	9000	6-9-43				6181	47487					14.5 C
11534							5000						
				7915	15139	36575	30780						

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson Part No. 05-1270 5270

Plate

Purchase Order No.	Date	Quantity	Date of 1st Ship	Shipments 1942	1943	1944	Operation Completed	Location of Card
5-5570-7 N	11-13-41	4	11-20-41	4440				N.S.C.
73511 "	10-26-42	5000	12-22-42		19900			N.S.C.
5.0888-P	5-20-43	8000	6-9-43		18080			N.S.C.
6.332-P	10-24-42	2100	11-6-41	8960			140	
64489-P	4-28-42	2000	2-23-42		8000		100	N.S.C.
6.579-P	7-3-42	5000	7-29-42		16560	9960		N.S.C.
78544-P	7-22-43	6256	8-20-43			25024	78	N.S.C.
1-184-P	11-24-43	5140	12-17-44			20560		
				9440	44650	60880		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson — Part No. OE 1071

Zone

Dinger

No.	Date	Quantity	Date of Cancellation	1941	1942	1943	1944	1945	1946	Cancellation Cancelled	Balance	Location of Order
V-5570-7 N	11-13-41	4	11-24-41	4427								Misc
P-6849-P	4-16-43	1000	6-29-43									Misc
64489-P	4-28-42	2000	5-20-42			126348		77000	47837	537		Misc
66590-P	7-3-42	1000	7-20-42			13500						Misc
70644-P	7-22-43	1000	8-20-43					1000				Misc
60336-60	10-23-41	2000	11-1-41	96369	83148					403		
69420-P	10-23-42	2000	12-17-42					12500				
73511-P	10-26-42	1000	12-17-42					1000				Misc
70570-P	8-5-43	10000	9-20-43					8867				
P-6881-P	5-20-43	1500	10-26-43					1500	120637			Misc
10185	11-24-43	1000	8-27-44						1000			
				100876	83148	371748		1117899				

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Magazine Interlock Rod
Location of Gear

| | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson Part No. QE 1080

Shipments

Purchase Order No.	Date	Quantity	Date of 1st delv	1943	1944	1945	1946	Overrun Cancelled	Location of Card
60334-P	10-27-41	2100	11-27-41	2000	2000	1300		100	
64489-P	4-28-42	4000	5-4-42			4000		100	Misc
67697-P	5-19-42	5000	5-21-42			5000		200	Misc
69434	6-21-42	2000	9-28-42			2000		100	
73511-P	10-26-42	5000	12-30-42				4500		Misc
73530-P	11-2-42	10500	11-20-42			3532	2779	88	
80211-P	3-29-43	11936	4-20-43				3936	1000	
80588-P	5-20-43	3900	1-10-44					1000	Misc
10186-P	11-26-43	10233	2-28-44					167	
				2000	2000	15832	11215		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Part No. QE 1207

Purchase Order No. | Purchase Order Date | Quantity | Date of 1st delv | Shipments 1941 | 1942 | 1943 | 1944 | Increase | Overrun

Purchase Order No.	Purchase Order Date	Quantity	Date of 1st delv	Shipments 1941	1942	1943	1944	Increase	Overrun
6445-M	4-28-42	2000	5-11-42		5/6-42 2000				
6650-P	7-3-42	36430	8-22-42		11-30-42 9289			9711	
					11799				

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Part No. OE 1709

Purchase Order No.	Date	Quantity	Date of 1st Ship	1941	Shipments 1942		1943	1944
8-849-P	4-16-42	6000	8-20-42				40380	
64489-P	4-21-42	2000	5-11-42			35000		
65697-P	5-19-42	5000	5-21-42			13246		
73511-P	10-26-42	2730	11-20-42			6434	47457	
10858-P	8-20-43	2499	10-20-43				27480	1N10
6-337-P	11-1-41	2100	11-1-41	5076	19548	576		
66574-P	Approx 7-1-42	5000	7-28-42			106001		
78547-P	2-26-43	500	8-20-43				2500	
10187-P	11-24-43	3000	12-21-43					2000
				5076	19548	114049	143917	

Qty Rel'd
Location of Chart

Qty Rel'd
960
91
579

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson Part No. AC 1210

Purchase Order No.	Date	Quantity	Date of 1st delv	Shipments 1941	1-1-42 to 4-30-42	5-1-42 to 11-30-42	1943	1944	Overruns Cancelled	Rec'd Dept Location of Stock
[illegible]	11-13-41	24	11-24-41							Misc
60388-P	10-27-41	2400	12-01-41	2376	2424					
73511-P	10-28-42	2400	12-22-42				1176		166	
80149-P	4-16-43	2400	4-20-43				1176 240			Misc Misc
				1431	2378	-	2016			

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Part No. QE 1717

17 x 10

Parallelogram Lever Plunger Rear

No.	Date	Quantity	Date Completed	1942	1943	1944	Overrun	Location of Card
75543-D	2-26-43	1500	4-30-43		20700			Misc
73511-D	10-26-42	3000	11-20-43	3000	3011		146	Misc
80849-D	4-16-43	3000	4-30-43	"	2989			Misc
63977-D	3-31-42	2000	5-11-42	1670				
80888-D	5-20-43	3000	9-15-43		2150	1142	146	Misc
10389-D	11-26-43	4386	1-10-44		-	3619		
65697	5-21-42	1000	5-29-42	1087			150	Misc
				13,183	10,999			

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Hudson

Part No. OE 1210

Shipments

Purchase Order No.	Purchase Order Date	Quantity	Date of 1st Sale	1941	1942	1943	1944	Location of Card
10888-P	9-20-42	1219	9-12-43			24473.80		Misc
6-339-P	10-22-41	4200	11-12-41	700.64	1744.40	20150.40		
65697-P	9-29-42	1000	9-21-43			2835.00		
73511-P	10-26-42	6240	11-20-43			44390	51617.00	Misc
76320-P	12-11-42	4000	2-17-43				47600.00	Misc
80849-P	11-16-43	1000	5-22-43				27400.00	Misc
85537-P	10-11-43	1000	11-8-43				10611.00	11880.00
				700.64	1744.40	5479.90	17106.81	

Plunger

Customer Hixson

S DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part No. RE 17174

14 & 20

Axle Bolt

No.	Date	Quantity	Date of Last Sale	1942	1943	1944	1945	1946	Overhaul Connecting Rod	Location of Card
64443-D	11-17-41	2400	4-24-42		4320	3040			141	
73511-D	10-28-42	3240	7-22-43				4800		164	M.Se
63340-D	10-27-41	2400	11-5-42	1320	960				206	M.Se
61590-D	7-8-42	4000	8-21-42			5000				
78547-D	2-26-43	1200	12-17-43				4800			M.Se
70898-D	5-20-43	2400	9-7-43				2520			M.Se
				1320	9840	8040	12120		777	M.Se

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Hudson

OE 1213

Overhaul Cancelled

Location of Canal

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Nelson Part No. CE 1224 11 of 20

Rail Bolt

Purchase No.	Order No.	Quantity Ord.	Date of Del. Order	1961	1962	1963	1964	OVERRUN	Location of Crank
76320-P	12-11-62	2000	4-7-63				2080	80	M.S.C.
80888-P	5-20-63	2000	10-23-63				2000		M.S.C.
84989-P	9-20-63	2000	1-17-64			2000			M.S.C.
40342-P	10-28-61	2100	10-21-61	6730	10970	3310		210	M.S.C.
68170-P	2-2-62	4424	2-16-62			4270	426		M.S.C.
93511-P	10-26-62	4434	11-20-62			4430 Cr.	469 Cr.		
				6730	10970	10340	4455		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Order No. Hudson — Dept. No. OE 1XXV — 17979

Triggs a Pawl

No.										Location of Order
P0149-P	4-16-42	750	10-5-42				19070			Misc
63797-P	3-24-42	4000	5-16-42			74300		440		
78505-P	2-7-42	1000	2-27-42				19497		24	Misc
P0008-P	5-20-42	1000	5-20-42				19379		176	Misc
65697-P	5-21-42	1000	5-21-42			11650		282		Misc
N834							15500			
						164850	114470			

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

1940

Customer Wilson

Order No. 25 1276

Spring Case

No.	Date	Quantity	Date of Last Order						Operation Cancelled	Location of Card
83138-P	6-17-43	1000	10-20-44							Misc
66590-P	7-8-44	1000	8-21-44						348	Misc
73511-P	10-26-44	1000	12-12-44						70	Misc
78505-P	2-2-43	10000	5-12-43							Misc
80881-P	5-20-43	4424	8-8-43						V	Misc
60343-P	10-28-41	2100	10-21-41	434	1767	84	1810		146	
64487-P	4-28-44	2000	5-5-44				2000			
64496-P	5-5-44	4000	6-8-44				4000			
69473-P	9-25-44	2000	11-20-44				2000			
				434	1767	84	12810	11955		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Nelson Job No. 05-1019

Nos 8 & 9

No.	Date	Quantity	Date Ship								Overhead	Location of Card
64489-P	5-3-43	2000	5-20-43				10000					M.C.
78505-P	2-2-43	1000	4-2-43					26500				M.C.
60994-P	10-20-41	2100	10-21-41	2100	43	1449	55	115500				
66990-P	7-8-43	4000	8-29-43				220000				101	
73511-P	10-26-43	4000	11-20-43				176000	242000				
80851-P	4-10-43	2000	5-6-43					97000	39960			
80888-P	5-20-43	2000	6-17-43						97120			M.C.
11363	1-20-44	2000	2-19-44						80000			
				4100	43	1449	55	563363	1442	19		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer HUDSON Part No. 05 1373 10 of 10

Sloping Nut

No.	Date	Quantity	Date of Last Order	2nd	3rd	4th	5th	6th	Overrun	Location of Cost Mine
66590-D	7-2-42	7000	9-5-42			1965170	2944760		671	Mine
70888-D	4-20-43	4000	6-30-43				3976010			Mine
60345-D	10-28-41	12400	11-12-41	1289250	1467170	2721930			1240	
63277-D	8-21-42	2800	5-29-43			3393600			1240	
73511-D	10-26-42	4000	1-11-43				3960370			
83137-D	6-17-43	7000	7-21-43				1936716		501	
13451-85535							57846			
							2052570			
				1289250	1467170	9730604	20851803			

Packard Electric Co.

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part No	Number First Order	Description	Shipments 1941	12-1-41 4-30-42	4-30-42 11-30-42	Nov. 30, 1942	Nov. 30, 1943	MAY 30, 1944	Total	Shipments on Orders Received 1941	Prior to April 30, 1942 12-1-41 to 4-30-42	4-30-42 to 11-30-42	1943	Total	After April 30, 1942
33473	34130	Nut	15 180 80	18 467 20	36 531 00	54 650 15				15 180 80	18 467 20	35 651 20	42 80	69 256 40	55 572 95
41471	41146	Nut	1 539 75	35 725 50	102 584 25	70 486 92				1 539 75	35 725 50	84 135 75	-	121 401 00	88 935 42
			16 720 55	54 192 70	139 115 45	125 137 07				16 720 55	54 192 70	119 786 95	42 80	190 657 40	144 508 37
					119 786 95 / 19 328 50										
					54 192 70 / 139 115 45 / 193 308 15										

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer: Packard Electric Division Part No. 33473

										Pieces over-run	Pieces Cancellation
	34130	1-22-41	16000	5-8-41	704000					1600	
	41020	9-4-41	16000	9-8-41	704000	2760				1669	
	42595	10-21-41	15000	11-25-41	660080	552840				1573	
PE	43524	12-1-41	12000	1-3-42		544600				1200	
PE	44309	12-26-41	13000	3-7-42		576000				1400	
	45204	1-5-42	543	1-5-42							
PE	45597	2-3-42	18000	3-21-42		1705 20	621480			1800	
PE	46386	2-24-42	9000	5-23-42			396000			900	
PE	48618	4-8-42	58000	6-20-42			2540440	4280		5800	
	48744	4-9-42	180	5-30-42			7200				
	49739	5-4-42	16400	12-24-42				702480		1640	
PE	52124	6-29-42	2000	7-6-42			88000			200	
PE	54113	8-10-42	32500	1-6-43				1178960			
PE	55299	9-30-42	84000	1-4-43				2057495			34800
PE	68158	7-22-43	30000	8-10-43				1178960			
PE	74625	8-31-43	57000	11-26-43				351400	1881040		1189
	79281	11-11-43	4500								4500
					1518080	1846720	3463120	5465015			

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Packard Electric Division Part No. 41471

Purchase Order No.	Date	Quantity	Date of 1st delv	Shipments 1941	12-31-41 / 4-30-42	5-1-42 / 11-30-42	1943	1944	Pieces over run	Pieces cancellation
PE 41146	9-8-41	24000	10-25-41	153975	1826025				2400	
PE 44267	12-20-41	37000	3-25-42		1746525	1305975			3700	
PE 45598	2-3-42	17000	6-11-42			1405000			1700	
47513	3-25-42	21189	6-26-42			1792575			2119	
PE 48618	4-8-42	48000	7-31-42			3112525			4800	
PE 49738	5-4-42	25000	11-7-42			78022			363	15000
PE 52299	9-30-42	117500	11-18-42			1064625	706184	40000		
PE 6311	2-3-43	7000	2-27-43				32782			
PE 65651	3-24-43	8600	12-15-42				256	45000		
PE 69947	7-21-43	603	12-21-43				45318	45225		
PE 74676	8-31-43	66000	12-24-43					4931900		
PE 79784	11-11-43	45000	3-21-44					3375000		
82631	12-30-43	37800	5-19-44					2460000		
88949	3-29-44	88	4-17-44					4400		
90637	4-17-44	180	5-19-44					13500		
				153975	3572550	10268425	704486.92			

1417

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

STUDEBAKER

SHIPMENTS AGAINST PURCHASE ORDERS

PART NO.	DESCRIPTION	1941			1942			TOTAL			1941			1942			TOTAL	
110433		386	60															
66408																		
33178																		
33179																		
SK 139A																		
SK 139B																		
SK 139C																		
30041																		
31760																		
34D-10																		
164-9-49																		
		386	60															

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer [illegible] Part No. 110 & 33. 2 of 12

Purchase Order No.	Date	Quantity	Date of 1st delv	Shipments 1941	12-7-41 to 4-30-42	5-1-42 to 11-30-42	1943	1944	Overrun	Cancelled
PM-419	8-8-41	7500	11-19-41	08650	44365	44491				
PM 06	11-6-42	19100	7-30-42	-		49844	103750		790	
PM 5150	1-28-43	23000	2-28-43				24150.00			
PM 6633	2-24-43	3500	12-31-43					3360.00		
PM 8259	3-5-43	6000	12-12-44					6300.00		
9888	9-24-43	11000	3-28-44					11550.00		
		69100		28640	44365	144940	347505	41410.00	790	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Goodrich Co

Part No. 68408

3 4/12

PM	H18	8-8-43	15000	11-11-43								
PM	1386	2-15-44	18200	11-11-44								
PM	5020	1-14-43	44100	3-23-43								
PM	8560	7-5-43	10000	12-31-43								
	9887	9-12-43	11000	2-20-44								
			78300									

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Studebaker Corp

Part No. 33278

Over-Run Cancelled

3640	10-28-41	150	12-19-41	-	7900				79

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer [redacted] Date No. 83279

5/12

Over Run Cancelled

30

36 40
MS 913V

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Studebaker Corp Part No. BK 139 A

Purchase Order No.	Purchase Order Date	Quantity	Date of 1st dely	1941	Shipments 12-1-41 to 4-28-42	Shipments 4-29-42 to 11-30-42	1943	1944	Over Run	Cancelled
3641	10-23-41	30	12-31-41		7998				23	
15621	3-1-42	123	6-30-42			6177			3	
33633	10-22-42	100	11-30-42			5304			12	
49787	3-4-43	150	3-31-43				9846		13	
14837	1-8-44	400	2-24-44					10011	23	
		1098			7998	11481	9846	10011	174	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Atlas Weber Corp. Part No. BK 139 B

7412

No.	Date	Quantity	Ext Qty	2nd		2nd	2nd	Over Runs Cancelled
3641	10-28-44	30	11-11-44		318 44			35
mb 1506 1	3-9-45	198	6-18-45			188 46		40
mb 33653	10-23-44	100	11-28-44			1158 44		14
41989	3-24-45	150	3-31-45				555 45	51
14833	3-8-44	400	3-24-45					43
		1098			318 44	1360	555 45	518 56	101

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Studebaker Corp Part No. AK. 139 C 8 of 12

										Over Runs	Cancelled
	3641	10-18-41	300	11-19-41		1970				38	
MS	15601	3-9-42	198	4-15-42		1956				63	
MS	33633	10-28-42	100	11-28-42			1996			6	
	49787	3-4-43	150	3-31-43					3060	6	
			648			1956	1996		3060	169	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Studebaker Corp Part No. 32044

	Purchase Order No.	Date	Quantity	Date of 1st deliv	Shipments 12-1-41 to 4-27-42	1941	1942	1943	1944
M &	3934	10-29-41	3000	11-30-41	37188				
MS	34476	10-6-42	1000	10-21-42			1353 60		
MS	48195	3-17-43	500	4-19-43				621 60	
MS	55953	5-31-43	6000	9-14-43				83001	
			10500		37188		1353 60	8962 60	

Over Runs Cancelled

99
178
18
163
408

Customer: Studebaker Corp.

Purchase Order No.	Date	Quantity	Date Delivered
3934	10-19-41	3,000	12-20-41
MS 40176	10-6-42	1000	10-21-42
MS 48195	3-17-43	500	4-17-43
MS 55953	5-31-43	6000	9-17-43
		10500	0

1941	1942	1943	1944
12-20-41	10-21-42	4-17-43	9-17-43
12,968.	1000	500	6000
	11,968.	1,468.	6,000
		500	
		3931	
12,968.	11,968.	4,133	6,000

[fol. 628] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[File endorsement omitted.]

Civil Action

No. 28999

AIRCRAFT & DIESEL EQUIPMENT CORPORATION, a Corporation, Plaintiff,

v.

MAURICE HIRSCH, W. JOHN KENNY, JOHN R. PAUL, H. C. MAULL, JR., GLADDING B. COIT, CARMAN B. BLOUGH, HENRY L. STIMSON, Secretary of War, ROBERT P. PATTERSON, Under Secretary of War, Defendants.

Before Miller, Associate Justice, United States Court of Appeals, District of Columbia, and Bailey and Proctor, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court.

OPINION—Filed September 28, 1945

Bailey, J:

The plaintiff is a corporation under the laws of the State of Delaware. The defendant Henry L. Stimson was the Secretary of War and the defendant Robert P. Patterson was the Under Secretary of War at the time of the filing of the amended complaint. The remaining defendants are the members of The War Contracts Price Adjustment Board.

This is a suit filed by the plaintiff, seeking a declaratory judgment to the effect that the original Renegotiation Act passed by Congress on April 28, 1942 and the later Act which became effective on February 25, 1944, being Title VII of the Revenue Act of 1943 which amended and re-enacted the Act of April 28, 1942, is each unconstitutional as repugnant to Articles I and II and Amendments V, VII and X of the Constitution of the United States.

[fol. 629] The plaintiff has filed an amended and supplemental complaint in which it also seeks injunctive relief restraining the defendants from further proceeding under

the Renegotiation Act and particularly under Sections 403(c)(2) and 403(e)(1) in so far as said Act and said sections provide for the taking of the plaintiff's "property" without any form of judicial review, and, in addition, injunctive relief restraining the defendants from taking plaintiff's "property" prior to a redetermination by The Tax Court of the United States of the determination of the War Contracts Price Adjustment Board, for the reason that said order was entered by the Board illegally, arbitrarily, capriciously and without regard to the evidence then before it, finally that the enforcement of said order of January 11, 1945 will cause plaintiff irreparable injury, and this latter relief is sought also under the general equity powers of the Court.

The amended complaint states that the plaintiff made a contract with the United States Navy on May 21, 1941, under which it agreed to furnish certain pumps to the United States Navy; that on March 17, 1942 it entered into an agreement supplemental to contract of May 21, 1941, by which plaintiff agreed to furnish certain pumps and other material to the United States Navy, and that during the fiscal year ended November 30, 1943, it furnished to the Navy Department pumps and other material as had not been previously furnished on the supplemental contract of March 27, 1942, and that all the equipment delivered by the plaintiff to the United States Navy in the fiscal year ended November 30, 1943 were all paid for by the United States on or before the 27th day of August 1943; that after certain proceedings and conferences the War Contracts Price Adjustment Board notified plaintiff that it had received excessive profits of $1,265,000 in the fiscal year ended November 30, 1943 and that on or about January 11, 1945 plaintiff was notified of the entrance and issuance of an order by the defendant, Robert P. Patterson, Under Secretary of War, acting as a delegate of the War Contracts [fol. 630] Price Adjustment Board that plaintiff had realized the said excessive profits in the said fiscal year and plaintiff was directed to pay that sum, less applicable taxes previously paid, to the Treasury of the United States; that on February 28, 1945 plaintiff requested the said Board to initiate a review of the above determination but that on May 3, 1945 the Board refused to do so; that under the provisions of Section 403(c)(2) of the Renegotiation Act the Board may direct the defendant Henry L.

Stimson, Secretary of War, to direct contractors or subcontractors for whom the plaintiff had done work under contract or pursuant to sales orders, to withhold such sums of money due the plaintiff as will aggregate $1,265,000 less applicable tax adjustment; that on April 4, 1945 plaintiff, pursuant to right granted by Section 403(c)(1) of the Renegotiation Act, petitioned the Tax Court of the United States to redetermine the excessive profits, if any, realized during the fiscal year ended November 30, 1943; that the United States filed a motion to strike this petition on the ground that it was filed prematurely; that this motion was heard on May 16, 1945 but that in the event The Tax Court shall dismiss said petition, the plaintiff will file another petition in The Tax Court for the same purpose; that "notwithstanding the fact that the plaintiff has filed its petition for redetermination in the Tax Court of the United States whereby it seeks an orderly determination of the amount, if any, it may owe to the United States of America, as excessive profits for its fiscal year ending November 30, 1943," the War Contracts Price Adjustment Board purposes to direct the Secretary of War to withhold moneys due to the plaintiff by said contracts for the account of the United States in the amounts determined by it to be due as excessive profits and the Secretary of War purposes to follow such directions; that in the event of such seizure of such amounts due to the plaintiff or the payment thereof by customers thereof to the Treasury, the amounts so seized or paid would be transferred to the Surplus Fund of the United States Treasury; that the Renegotiation Act [fol. 631]in so far as it may authorize such seizure is in violation of rights guaranteed to the plaintiff by the Constitution of the United States; that there was, as of May 1, 1945, due plaintiff from its customers (they being firms, individuals and corporations, other than the United States of America, or any department, agency or instrumentality thereof) approximately $274,000, and on that date plaintiff had on its books unfilled orders from such customers and others (not the United States of America or any department, agency or instrumentality thereof), calling for the manufacture and sale of its products at prices approximately aggregating $890,000. The said sums now due, or such portion thereof as the War Contracts Price Adjustment Board has determined should be withheld and paid into the Treasury, and other sums which may become

AIRCRAFT D-DIESEL EQUIPMENT CORP.

Studebaker Corp

4401 Ravenswood Avenue
CHICAGO, ILL.

Order No. 31760

1944

Every Item Cancelled

183
18
48
249

due in the future, Henry L. Stimson or his delegates will, as his delegate Robert P. Patterson did a prior year, direct to be withheld from the plaintiff and paid into the Treasury of the United States. Plaintiff avers that, after adjustment for Federal income and excess profits taxes, the amount involved in the order and decision of War Contracts Price Adjustment Board does not and can not exceed $275,000, but defendant Henry L. Stimson, acting at the threatened direction of the War Contracts Price Adjustment Board nevertheless threatens to, and will, unless enjoined and restrained, order the withholding from the plaintiff and the payment by plaintiff's customers of said sums of money into the Treasury of the United States; that the action of the War Contracts Price Adjustment Board was arbitrary; it refused to state the ground upon which it acted and this was in violation of the provisions of the Constitution in that it acted without due process of law.

The amended complaint further sets out certain transactions which it claims were contracts entered into before the passage of the original Renegotiation Act under which various articles were sold, some of which were sold and delivered after the passage of that Act and some before, and that the action of the defendants in making any redetermination of all profits arising under these contracts [fol. 632] was unconstitutional and void; that as to contracts entered into after the passage of the Renegotiation Act, in so far as they might be controlled by the Act, the Act was so indefinite and uncertain and was unconstitutional in investing administrative bodies with the legislative powers without sufficiently defining the terms and conditions under which these powers were to be exercised.

The amended complaint seeks an injunction enjoining the defendants from eliminating any excessive profits of the plaintiff determined by the War Contracts Price Adjustment Board by directing any customers of the plaintiff to withhold for the account of the United States, or otherwise, any moneys due to the plaintiff or directing any such customers to pay any money due to the plaintiff into the Treasury of the United States.

The preliminary question to be determined is the jurisdiction of equity. In the first place the plaintiff has filed its petition in The Tax Court of the United States, seeking a determination of the amount of excess profits, if any,

Customer: Studebaker Corp

Purchase Order No.	Date	Quantity	Date of Del'y	1941	Shipped 4-[illegible]-42	Shipped 12-[illegible]-42	1943	1944
MS 3934	10-9-41	3000	12-19-41		6564 ✓			
MS 3446	10-6-42 ✓	1000	10-21-42 ✓			VIA 13		
MS 55479	5-20-43	4000	6-15-43				1600	
MS 55953	5-31-43	2000					1690 VIA	
		10000			6564 ✓	VIA 13	2290 VIA	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part No. 34 D 10

11-12

Cover Finish Cancelled

455
147
496
1098

Owner: Studebaker Corp

No.								
1-6 9558	IV-13-W1	1700	2-16-47	2962	9469 40	2963	2965	2966

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

12462

Part No. 16R 9049

Over Run Cancelled
66

[fols. 626-627] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

STIPULATION—Filed July 18, 1945

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys, that certain affidavits and exhibits attached thereto, which for identification, are marked, affidavits of B. Ch. Kelleher, by reference and stipulation made a part of the amended and supplemental Bill of Complaint, and by reference, made a part of the Amended and Supplemental Complaint to be filed by the plaintiff, may be filed separate and apart from the complaint and that notwithstanding such affidavits and exhibits attached thereto are not physically attached to such Amended and Supplemental Complaint, may be treated and considered as if such affidavits and exhibits were physically attached thereto; and that all motions heretofore filed herein shall stand as to the Amended and Supplemental Complaint.

Ga[redacted]her, Rinaker, Wilkinson & Hall, By Arthur R. [redacted] (s), Hill & Crenshaw, By Francis W. Hill, Jr. (s), Attorneys for the Plaintiff, Francis M. Shea (s), Rawlings Ragland (s), Attorneys for the Defendants.

which it has earned if the Renegotiation Act be constitutional. It is enough to say that if The Tax Court of the United States should hold that the plaintiff received no excess profits, then the constitutionality of the Act of Congress is immaterial so far as the rights of the plaintiff are concerned and for that reason the suit is premature.

In addition to this, equity has no jurisdiction for the reason that the plaintiff has complete remedies by actions at law. It claims that certain parties are indebted to it by reason of certain contracts; the payment of these claims under a judgment at law would give a full, adequate and complete remedy. These debtors are not numerous, and so far as the plaintiff's being entitled to relief to avoid a multiplicity of suits, it has a complete remedy in the Court of Claims for all sums of which it may be deprived, if the Renegotiation Act be unconstitutional.

[fol. 633] In the case of *Coffman v. Breeze Corporations, Inc., et al.*, 323 U. S. 316, which was a suit by a patent owner against his licensees, seeking an adjudication of unconstitutionality of the Royalty Adjustment Act and seeking an injunction against the licensees from complying with the Act by paying the balance in excess of royalty payments and in excess of the amount declared by the War and Navy Departments to be fair and just into the Treasury of the United States, the Court held that equity was without jurisdiction. The Act in question in that case deprived the licensor of any remedy. The Court said:

> "The only rights asserted as the basis for the relief sought by appellant are derived from the license agreements. These agreements, so far as now appears and as we assume for present purposes, are contractual obligations to pay the stipulated royalties. As they accrue, the royalties become simple debts recoverable in an action at law, or possibly, where the accounts are complicated, in a proceeding for an accounting such as appellant has already begun in its separate suit pending in the District Court of New Jersey. *Kirby* v. *Lake Shore & M.S.R. Co.*, 120 U. S. 130; *United States* v. *Old Settlers*, 148 U. S. 427, 465.
>
> "Appellant does not in the present suit bring to our attention any facts showing or tending to show that a suit to recover a money judgment for the royalties would not afford complete and adequate relief without

resort to an equitable remedy. In such a suit if appellee Breeze is obligated by the contracts in question to pay the royalties to appellant, it can discharge that obligation only by payment of the amount due, or by setting up the Royalty Adjustment Act as a defense. Compliance with the duty under the Act to pay into the Treasury the royalties withheld from appellant would operate by the terms of the Act as a discharge of the obligation to pay appellant. If that defense were offered, the constitutional validity of these provisions of the Act would be a justiciable issue in the case, since upon its adjudication would depend appellant's right to recovery.

"But whether the provisions of the Act be valid or invalid appellant shows no ground for equitable relief. If valid they would be a defense, and appellant would be entitled to no relief other than that afforded by the suit against the Government authorized by § 2 of the Act. If invalid, appellant's right to recover remains unimpaired. The sufficiency of the defense may be as readily tested in a suit at law to recover the royalties as by the present suit in equity to enjoin payment of the royalties into the Treasury. In either case appellant would receive all the relief to which it shows itself entitled."

[fol. 634] The Act of Congress involved in the *Coffman case* is very similar to the Act in this case and there is no reason why the plaintiff has not a complete and adequate remedy by suit against its customers for any sums that may be due from them, if the Acts be unconstitutional; and, as to any liability on the part of the United States, its remedy is in the Court of Claims.

The plaintiff contends that the *Coffman case* was decided simply upon the ground that the complaint did not allege that the plaintiff in that case would be irreparably injured. It is not sufficient, however, to allege irreparable injury without showing the facts upon which that injury follows. In this case, mere delay in the collection of sums due to the plaintiff, the complaint not stating that the debtors are or are likely to become insolvent, does not constitute irreparable injury.

So far as the administrative procedure is concerned, any defects in the hearing before the War Contracts Price

Adjustment Board are immaterial so long as the plaintiff obtains a full hearing before The Tax Court of the United States. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333.

In the case of *Arrow Distilleries, Inc.* v. *Alexander*, 24 Fed. Supp. 880, which was affirmed by the Supreme Court of the United States in 306 U. S. 615, it was held that one is not entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted, even though the question of the constitutionality of the statute prescribing the administrative remedy is undecided.

We conclude, therefore, that the suit is premature and, in addition, that equity has no jurisdiction.

[fol. 635] The motions of the defendants to dismiss the amended complaint and for a summary judgment will each be sustained without prejudice, however, to the right of the plaintiff to maintain actions at law against its debtors and to bring suit as it may be advised in the Court of Claims.

(s) Justin Miller, (s) Jennings Bailey, (s) James M. Proctor.

[fol. 636] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

APPLICATION FOR DESIGNATION OF A THREE-JUDGE STATUTORY COURT—Filed February 4, 1946

Plaintiff having filed in this case its Amended and Supplemental Complaint seeking a preliminary and permanent injunction and a declaratory judgment to suspend and restrain the enforcement of the Renegotiation Act, enacted February 25, 1944, Public Law 235, 78th Congress, 50 U.S.C.A. App. 1191, amending Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, (Public Law 528, 77th Congress), approved April 28, 1942, as amended by Section 801 of the Revenue Act of 1942 (Public Law 753, 77th Congress), approved October 21, 1942, as further amended by Section 1 of the Military Appropriations Act of 1944 (Public Law 108, 78th Congress), approved July 1, 1943, and as further amended

by Public Law 149 (78th Congress), approved July 14, 1943, and to suspend and restrain the enforcement of a certain order of the War Contracts Price Adjustment Board of January 11, 1945 (attached as Exhibit A to the Amended and Supplemental Complaint), which order became operative as of May 3, 1945, on the ground that said Acts, as amended, and the said order are and each is repugnant to the Constitution of the United States.

[fol. 637] That heretofore, on June 6, plaintiff filed herein its Motion to make application for the designation of a three-judge statutory court, and upon said motion having been filed, the Chief Justice of the United States Circuit Court of Appeals for the District of Columbia designated the Honorable Mr. Justice Miller, Associate Judge of the United States Court of Appeals for the District of Columbia, the Honorable Mr. Justice James M. Proctor, Associate Judge of the District Court of the United States for the District of Columbia, to participate with the Honorable Mr. Justice Jennings Bailey, Associate Judge of the District Court of the United States for the District of Columbia, as a three-judge statutory court to hear and determine said matter. That said Court, so constituted, heard arguments of counsel, examined briefs, exhibits, and affidavits filed in said cause, and on September 28, 1945, filed with the Clerk of this Court an opinion in said cause. Thereafter, and before any order was entered thereupon, Mr. Justice Justin Miller resigned as Associate Justice of the United States Court of Appeals for the District of Columbia, effective as of October 1, 1945, and since said date has not acted as a judge of said Court, or as one of the judges of the statutory court impannelled in this cause.

Wherefore, application is hereby made to the Chief Justice of the United States Court of Appeals for the District of Columbia to designate a three-judge statutory court to hear said cause, as provided by the Act of August 24, 1937, 28 U.S.C.A., Section 380(a).

For the Court: Jennings Bailey (s), Justice.

Dated this 4th day of February, 1946.

Approved: Gallagher, Rinaker, Wilkinson & Hall (s), Attorney for plaintiff.

No objection as to form.

Walker Lowry (s), Attorney for defendants.

[fol. 638] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

[File endorsement omitted.]

ORDER DESIGNATING THREE-JUDGE STATUTORY COURT—Filed February 5, 1946

Upon the request of Jennings Bailey, Associate Justice of the District Court of the United States for the District of Columbia, before whom there is pending in the above entitled cause a Complaint by the plaintiff seeking preliminary and permanent injunction and a declaratory judgment to suspend and restrain the enforcement of an Act of Congress and of an Order of the War Contracts Price Adjustment Board, promulgated allegedly upon the authority thereof, on the ground that such Act and Order are repugnant to the Constitution of the United States, and a three-judge statutory court having heretofore been designated, consisting of Justices Miller, Bailey and Proctor, and it appearing that before any final Order was entered by said Court, Mr. Justice Miller resigned as a judge of said court and has taken no further part in the proceedings in this cause, and notice thereof having been duly given to the Attorney General of the United States, I hereby designate Henry W. Edgerton, Associate Justice of the United States Court of Appeals for the District of Columbia, and James M. Proctor, Associate Justice of the District Court of the United States for the District of Columbia, to participate with Jennings Bailey, Associate Justice of the [fol. 639] District Court of the United States for the District of Columbia, as a three-judge statutory court to hear and determine this matter.

Lawrence D. Groner (s), Chief Justice

Dated this 5th day of February, 1946.

[Fols. 640-641] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

AIRCRAFT & DIESEL EQUIPMENT CORPORATION, Plaintiff,

v.

MAURICE HIRSCH, et al., Defendants.

Civil Action

No. 28999

[File endorsement omitted.]

ORDER AND JUDGMENT—Filed March 5, 1946

This cause having come on to be heard before the Court upon the motion of plaintiff for an interlocutory injunction and upon the motions of defendants to dismiss the amended complaint and for summary judgment, and counsel for plaintiff and defendants having been heard;

Now upon said motions, and upon the pleadings, affidavits, files and records of this case, due deliberation having been had thereon, it is

Ordered that:

(1) The motion for an interlocutory injunction be, and it hereby is, denied,

(2) The amended and supplemented complaint be, and it hereby is, dismissed and,

(3) Summary judgment be, and it hereby is, granted in favor of the defendants.

This order is entered without prejudice to the right of the plaintiff to maintain actions at law against its debtors and to bring suit as it may be advised in the Court of Claims.

Dated: March 5th, 1946.

(s) Henry W. Edgerton, Justice, (s) Jennings Bailey, Justice, (s) James M. Proctor, Justice.

Approved: (s) John F. Sonnett, Assistant Attorney General, Attorney for Defendant.

Approved as to form: (s) Francis W. Hill, Jr., Attorney for plaintiff.

[fol. 642] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

PETITION FOR INJUNCTION PENDING APPEAL—Filed March 11, 1946

And now comes the Aircraft & Diesel Equipment Corporation, plaintiff in the above entitled cause, and respectfully prays that this Court, pursuant to the provisions of Rule 72 of the Rules of Civil Procedure for the District Court of the United States, grant an injunction restraining the defendants and each of them from directing customers of the plaintiff to withhold for the account of the United States any money due plaintiff from said customers, and likewise restraining the defendants and each of them from directing customers of the plaintiff to pay into the Treasury of the United States any money due plaintiff from said customers, pending the hearing on appeal from an order denying plaintiff's motion for an interlocutory injunction restraining the enforcement, operation and execution of the Renegotiation Act upon the ground that such Act is, or parts thereof are, repugnant to the Constitution of the United States; and in support of such prayer, petitioner alleges:

1. That petitioner proposes to and will file, within the time required by law, a notice and petition for allowance of an appeal to the Supreme Court of the United States [fol. 643] from the order heretofore entered in this cause on the 5th day of March, 1946, denying the plaintiff motions for an interlocutory injunction and a declaratory judgment and dismissing the Amended and Supplemental Complaint and allowing the motions of the defendants to dismiss such Amended and Supplemental Complaint, and for summary judgment, said order reciting that it is without prejudice to the rights of the plaintiff to maintain actions at law against its debtors and to bring suit as it may be advised in the Court of Claims; and petitioner alleges that it will prosecute said appeal in the manner, and within the time, required by law.

2. That the defendants, or either or some of them, will, (as they have admitted by affidavits filed in this cause)

unless restrained by this Court, direct customers of the plaintiff, who have or had contracts with the United States of America, to withhold from moneys otherwise due the plaintiff, such sums of money which will aggregate approximately $275,000, asserted to be due to the United States of America from the plaintiff, after tax adjustments, as excessive profits realized by the plaintiff during its fiscal year ended November 30, 1943, under the Renegotiation Act passed February 25, 1944, as determined on January 11, 1945 by Robert P. Patterson, then Under Secretary of War, now Secretary of War, as delegate of the War Contracts Price Adjustment Board, which said determination some of the defendants acting as the War Contracts Price Adjustment Board confirmed on May 3, 1945, and adopted as the determination of the War Contracts Price Adjustment Board.

3. That if the defendants, either or some of them, direct the withholding by customers of the plaintiff of such sums of money as will aggregate approximately $275,000, and direct the payment thereof into the Treasury of the United [fol. 644] States of America and the customers follow such directions as they will, the petitioner will suffer irreparable injury in that:

A. The petitioner's working capital will be reduced not only by the sum of $204,000 already taken from it upon renegotiation demands for the year ended November 30, 1942, but by the additional amount of approximately $275,000 proposed to be taken, and said working capital will be reduced to $92,000, an amount insufficient to carry on petitioner's program of reconversion to petitioner's peace-time business; all of which said reductions will occur *prior* to any redetermination in The Tax Court of the United States of the amount of excessive profits, if any, realized by petitioner, and all of which said reductions will occur *prior* to any determination of the constitutionality of said Acts under which said amounts are alleged to be due.

B. That plaintiff has over forty (40) customers who owe plaintiff at present approximately $88,000 in fixed amounts; that there are approximately twenty (20) other customers of the plaintiff with whom the plain-

tiff is presently negotiating in respect of claims arising out of termination of contracts, and the amounts of such claims are not now fixed but, as asserted, aggregate $250,000, so that as of the date of filing this petition, it would be necessary for the defendants, or either or some of them, to notify not less than thirty (30) customers of the plaintiff to withhold money due to the plaintiff and to pay into the Treasury of the United States such moneys as they owe the plaintiff in order that defendants may collect $275,000. If such customers are so directed, and refuse to pay plaintiff the amounts now due, as they will, the plaintiff will be required to sue over thirty (30) of its customers (based upon the situation as it exists today), in at least twenty (20) jurisdictions, and will be required to employ at least twenty (20) attorneys in such jurisdictions to institute such suits, and to pay them various sums of money which in the aggregate will be representative of a large sum of money, and plaintiff will also be required to pay large sums of money in and about the prosecution of such suits, for courts costs, witness fees, stenographic fees, and other essential fees and costs.

C. The institution of suits against such thirty (30) customers will seriously impair the good will now subsisting between plaintiff and such customers, and cause such customers to refuse to do further business with plaintiff.

(D) That plaintiff's officers and other employees will be required to absent themselves from their usual duties to testify in such suits as may be required to be instituted, and will be required to duplicate documents, books and records of the corporation which will necessarily be sent to various jurisdictions to prosecute such suits a' ' the orderly administration of the affairs of the plaintiff will thereby be disrupted.

[fol. 645] E. That plaintiff will run the risk of the subsequently impaired credit or insolvency of its customers who may be required to pay money owed to plaintiff into the Treasury of the United States.

4. That the administrative remedy afforded petitioner for a redetermination in The Tax Court of the United

States will not save the petitioner from the irreparable injury which will necessarily follow as heretofore alleged because:

A. Although the petitioner filed its petition in The Tax Court of the United States on May 18, 1944, in respect of renegotiation of its business in its fiscal year ended November 30, 1942, such petition has not yet been marked for trial and it is improbable that it will be tried within the next year.

Notwithstanding this, there has been paid into the Treasury of the United States $204,000 during July, 1944, by customers of the plaintiff, pursuant to the directions of the Under Secretary of War.

Petitioner on July 2, 1945, filed its petition in The Tax Court of the United States for a redetermination of its excessive profits in its fiscal year ended November 30, 1943. Such petition has not been marked for trial and it is improbable that it will be tried within the next year, and it is also improbable that it will be determined within the next year and one-half. There will be an additional $275,000 paid into the Treasury of the United States unless this Court restrains the defendants from directing customers of the petitioner to pay an aggregate of such $275,000 into the Treasury of the United States.

B. That when The Tax Court of the United States shall have made a determination of the amount, if any, which the plaintiff owes to the United States, on business done during its fiscal years ended November 30, 1942 and November 30, 1943, assuming that the Acts be declared constitutional, the present appropriation for the payment of refunds which expires June 30, 1946, will have expired, and no funds will then be available to make any refund, even if such law may be construed so as to make possible refunds upon a determination of The Tax Court of the United States.

C. That there is no jurisdiction in the Court of Claims of claims against the United States, which may be invoked by petitioner, by reason of any refund which may be determined to be due to the petitioner in The Tax Court of the United States.

D. That if The Tax Court of the United States (1) shall have determined that a lesser amount be due for the fiscal year ended November 30, 1942 than the amount determined by Robert P. Patterson, Under Secretary of War, as delegate of the Secretary of War, or (2) shall have determined that a lesser amount be due for plaintiff's fiscal year ended November 30, [fol. 646] 1943 than the amount determined to be due by Robert P. Patterson, as delegate of the War Contracts Price Adjustment Board, or (3) shall have determined that a lesser amount be due than that determined by Robert P. Patterson to be due in both such years, as stated above, the defendants, either or some of them, will have collected the amounts determined by Robert P. Patterson in the sum of $275,000 for plaintiff's fiscal year ended November 30, 1943, as the Secretary of War acting through his delegate, Robert P. Patterson, has already collected $204,000 found by Robert P. Patterson to have been due for plaintiff's fiscal year ended November 30, 1942, plus interest at the rate of 6% per annum from the time the respective determinations were made, until the amounts so determined were and will have been collected, notwithstanding the statutory provision for refunds prescribes that the interest on refunds shall not exceed 4% per annum, and notwithstanding that the plaintiff will thereby be deprived of 2% per annum on money improperly collected from its customers.

E. That in the event the Supreme Court of the United States determines that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, and the Renegotiation Act are unconstitutional, or that one of said Acts is unconstitutional, as petitioner alleges the Supreme Court of the United States will so determine, all amounts which shall have been paid into the Treasury of the United States, upon orders of the Secretary of War, as aforesaid, will be unavailable to plaintiff even though such moneys ought to be paid by the United States to the plaintiff, because no court is presently constituted with jurisdiction to grant plaintiff any relief for the tortious conduct of the officers and employees of the United States who shall have caused said money owed

by plaintiff's customers to be paid into the Treasury of the United States. It is extremely doubtful whether a determination of the constitutionality of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, or the Renegotiation Act, or either of such Acts, will have been made by the United States Supreme Court prior to June 30, 1946; and the present appropriation for refunds expires, by its terms, June 30, 1946.

5. That petitioner has no remedy in the Court of Claims for any sums of money of which it has already been deprived or of which it will be deprived if Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, or the Renegotiation Act, or both of such Acts, be determined to be unconstitutional. Neither has petitioner any remedy in the Court of Claims, for any sums representative of the difference between the amount determined by The Tax Court of the United States, and the amounts determined by the Under Secretary of War (for the fiscal year ended November 30, 1942) or as determined [fol. 647] by the War Contracts Price Adjustment Board (for the fiscal year ended November 30, 1943), even if either or both said Acts be determined to be constitutional, for the following reasons:

A. Petitioner did heretofore, on the 2nd day of July, 1945, file its petition in The Tax Court of the United States, praying a determination of the amount of its excessive profits realized in the year 1943, and said petition is now pending untried and undisposed of in said Court.

B. That petitioner has no contractual relationship with the United States of America, or any agency or department thereof, which could be the subject matter of a suit in the Court of Claims, all contractual obligations of the United States to the plaintiff having been discharged.

C. That unless restrained by order of this Court, customers of the petitioner will be directed to pay $275,000 owed to petitioner, into the Treasury of the United States, *before* and *prior* to any determination

of the amount of excessive profits, if any, in The Tax Court of the United States; and said payment will be in addition to the $204,000 heretofore paid into the Treasury of the United States *before* and *prior* to any determination made by The Tax Court of the United States on the 1942 petition now pending.

D. In the event the Renegotiation Act be declared unconstitutional, or in the event The Tax Court of the United States (after the Act be found constitutional), determines the excessive profits realized by petitioner to be less than the determination made by the War Contracts Price Adjustment Board, then either all or a part of the money so paid into the Treasury of the United States would rightfully belong to the petitioner, but petitioner would be without remedy to recover such amounts.

E. That in view of time required for either the decision of the Supreme Court on the constitutionality of the Act, or action of The Tax Court of the United States on said two petitions, it is most improbable that such action (either the decision of the Supreme Court of the United States) will occur prior to June 30, 1946, at which time the present appropriations for renegotiation refunds terminates.

F. That petitioner has *no* remedy under the Renegotiation Act in the Court of Claims, and its only right to any relief under the statute will arise *after* the action of The Tax Court of the United States, and then only under the present appropriation for renegotiation refunds, which expires June 30, 1946, which expiration, in all probability, will occur before any decision is reached.

G. That there has already been paid into the Treasury of the United States $204,000 due to petitioner [fol. 648] from customers of petitioner, upon renegotiation demands for the year 1942, prior to any determination as to the constitutionality of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended or any determination of excessive profits by The Tax Court of the United States.

H. That unless restrained by an order of the Court, petitioner will be deprived of $479,999—($204,000 for the fiscal year 1942, and $275,000 for the fiscal year 1943)—*before* and *prior* to any determination as to the constitutionality of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the Renegotiation Act by the Supreme Court, and prior to any determination in The Tax Court of the United States of the amount, if any due, to the United States of America, if such renegotiation laws be valid.

I. That petitioner ought not to be deprived of its money due from its customers prior to any decision on the constitutionality of both Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, or the Renegotiation Act, because there exists no adequate remedy to redress the irreparable injury which will result to the plaintiff, if it be required to sue approximately thirty (30) of its customers; such irreparable injury being the loss of the good will it has built up with such customers, the large amounts of money which will be required to pay not less than twenty (20) attorneys in twenty (20) different jurisdictions to sue not less than thirty (30) customers, as well as the costs incident to preparation and prosecution of such cases and the inevitable disruption of the ordinary business of plaintiff by reason of breaking down its filing system, and other vexations incident to a multiplicity of suits at law.

6. That petitioner's plant, machinery, and equipment in the City of Chicago, Illinois, is free from liens and encumbrances of all kinds, and is worth in excess of $260,000; that petitioner is solvent and able to pay any judgment which may be rendered against it for any amount found due as a result of renegotiation if said Renegotiation Act be found constitutional. Under the provisions of Section (c)(2) of the Renegotiation Act, suit may be brought by the United States of America in the District Court of the United States for the Northern District of Illinois, located at Chicago, Illinois, and in such suit all questions heretofore presented by the complaint herein, and by the motions made in said cause, may be adjudicated; that payment

into the Treasury of the United States before a judicial determination of the constitutionality of the Renegotiation [fol. 649] Act, and a determination by The Tax Court of the United States of the amount due, if any, would and does impose unnecessary hardship upon the petitioner.

7. That following the termination of hostilities on August 15, 1945, petitioner was compelled to and is now reconverting to products manufactured prior to war demands; that in such reconversion petitioner will need all available working capital; that the taking of $275,000 due to plaintiff prior to a determination that said sum, or any portion thereof, is due the United States of America will cause unnecessary and irreparable injury to the petitioner, which cannot be obviated by the subsequent repayment at a much later date, even if said sum be repaid.

8. The United States nor the defendants cannot be injured in any way by awaiting the decision on the constitutionality of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, and the Renegotiation Act, and if said Acts be constitutional, by a redetermination of the excessive profits for the fiscal years ended November 30, 1942 and November 30, 1943, if any, due the United States by the petitioner in The Tax Court of the United States, whereas the utility of the petitioner as a useful social institution will be greatly hampered if the defendants be permitted to make the additional collection of $275,000 at this time, when the petitioner is in the midst of a program of reconverting its energies to peace-time pursuits.

Wherefore, the plaintiff prays the entry of an Order under Rule 72 of the Rules of Civil Procedure for the District Courts of the United States, granting an injunction on such reasonable terms as the Court may impose pending the hearing of this cause on appeal.

Aircraft & Diesel Equipment Corporation, By B. Ch. Kelleher, President.

[fol. 650] *Duly sworn to by B. Ch. Kelleher. Jurat omitted in printing.*

[fol. 651] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA—Filed March 29, 1946

The plaintiff, Aircraft & Diesel Equipment Corporation, a corporation, by its attorneys named below, feeling itself aggrieved by the final order of the court entered herein on the 5th day of March, 1946, for reasons set forth in its Assignment of Errors which is filed herewith, hereby prays an appeal from such order, to the Supreme Court of the United States, and further prays a citation be issued as provided by law: that an order be entered fixing the amount of bond and security as the law directs, and that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

Aircraft & Diesel Equipment Corporation, By: Arthur R. Hall, Francis W. Hill (s), Woodward Building, Washington 5, D. C.; Arthur R. Hall (s), 231 South La Salle Street, Chicago, Illinois; Attorneys for Plaintiff.

Copy received 3/29/46, John F. Sonnett (s), Attorney for Defendants.

[fol. 652] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

ASSIGNMENT OF ERRORS—Filed March 29, 1946

Aircraft & Diesel Equipment Corporation, appellant herein, assigns as error, in support of its appeal herein, the following:

1. The Court below erred in refusing to grant an interlocutory injunction restraining the enforcement, operation and execution of the Renegotiation Act.

2. The Court below erred in denying plaintiff's motion for a declaratory judgment.

3. The Court below erred in denying plaintiff's motion for an interlocutory injunction.

4. The Court below erred in not granting to plaintiff a hearing on its right under the complaint to a permanent injunction.

4. The Court below erred in not granting to plaintiff a hearing on its right under the complaint to a permanent injunction.

5. The Court below erred in not granting both a temporary injunction and a permanent injunction enjoining the defendants from carrying into operation their plan to cause customers of the plaintiff to withhold moneys otherwise due the plaintiff, and to order said customers to pay moneys owed to the plaintiff into the Treasury of the United States.

6. The Court below erred in sustaining the motion of the defendants for summary judgment.

7. The Court below erred in the entry of a summary judgment.

8. The Court below erred in granting defendants' motion for a summary judgment and entering such judgment.

9. The Court below erred in sustaining the motion of the defendants to dismiss the Amended and Supplemental Complaint.

10. The Court below erred in the entry of the order dismissing the Amended and Supplemental Complaint.

11. The Court below erred in dismissing the Amended and Supplemental Complaint without a hearing on the merits.

12. The Court below erred in not granting both a temporary and a permanent injunction enjoining defendants from carrying into effect their plan to order customers of the plaintiff to withhold moneys due to the plaintiff and to cause moneys due plaintiff from its customers to be paid by such customers into the Treasury of the United States prior to the time The Tax Court of the United States shall have made a determination of the excessive profits, if any.

13. The Court below erred in not enjoining the defendants from carrying into effect their plan to cause customers of the plaintiff to withhold money due to the plaintiff and to cause such money due to the plaintiff in the aggregate

amount of approximately $275,000.00, to be paid into the Treasury of the United States, prior to the time The Tax Court of the United States shall have made its redetermination in accordance with the provisions of the Renegotiation Act.

[fol. 654] 14. The Court below erred in holding that equity had no jurisdiction to determine the questions presented by the Amended and Supplemental Complaint.

15. The Court below erred in holding that equity had no jurisdiction of the cause because the plaintiff had an adequate remedy at law.

16. The Court below erred in not holding that the plaintiff would not suffer irreparable injury as a result of the threatened withholding from plaintiff of sums of money due the plaintiff from its customers, and the threatened ordering of plaintiff's customers to pay money owed to it by its customers to the Treasury of the United States.

17. The Court below erred in holding that equity had no jurisdiction because no irreparable injury would result to the plaintiff if the relief prayed for, the issuance of a temporary injunction and a permanent injunction, were not granted.

18. The Court below erred in holding that equity had no jurisdiction because the plaintiff did not have "numerous customers," which it would be required to sue to obtain relief, if the relief prayed for, as aforesaid, were not granted.

19. The Court below erred in holding that equity had no jurisdiction to grant the relief prayed for to avoid a multiplicity of suits.

20. The Court below erred in holding that the Amended and Supplemental Complaint was prematurely filed.

21. The Court below erred in holding that the suit was prematurely filed because administrative remedies afforded by the Statute are adequate.

[fol. 655] 22. The Court below erred in holding that the suit was prematurely brought because plaintiff's remedies in The Tax Court of the United States had not been exhausted.

23. The Court below erred in dismissing the Amended and Supplemental Complaint without determining the questions of the constitutionality of the Renegotiation Act, Title VII of the Revenue Act of 1943.

24. The Court below erred in dismissing the Amended and Supplemental Complaint without determining whether the proceedings taken under the Renegotiation Act were arbitrary and capricious and not within the powers delegated to the War Contracts Price Adjustment Board by the Renegotiation Act.

25. The Court below erred in not holding the Renegotiation Act to be in violation of the Fifth Amendment to the Constitution of the United States in that it authorizes executive or administrative officers of the United States to take plaintiff's property without paying just compensation therefor.

26. The Court below erred in not holding that the Renegotiation Act is in violation of the Fifth Amendment to the Constitution of the United States in that it permits the taking of plaintiff's property without due process of law.

27. The Court below erred in not holding that the Renegotiation Act is unconstitutional in that it violates Article I, Section 1, of the Constitution of the United States by permitting administrative or executive officers to exercise legislative power vested exclusively in The Congress of the United States.

28. The Court below erred in not holding that the Renegotiation Act is unconstitutional in that by its terms it enables or permits administrative or executive officers of [fol. 656] the United States to exercise the power to make laws, a power exclusively vested in The Congress of the United States under the provisions of Article I, Section 1, of the Constitution of the United States.

29. The Court below erred in not holding that the Renegotiation Act is unconstitutional in that it contained insufficient and inadequate standards for the guidance of the War Contracts Price Adjustment Board to carry out the mandate of The Congress of the United States embraced in such Act.

30. The Court below erred in not holding that the Renegotiation Act is unconstitutional in that it enables or permits executive or administrative officers of the United States to determine that a liability on the part of a person to the United States exists, the amount of such liability, and authorizes such officers to collect the amount of such liability as so determined, all of which said functions are exclusively vested in the judicial branch of the Government of the United States by the provisions of Article III, Sections 1 and 2, of the Constitution of the United States.

31. The Court below erred in not holding that the Renegotiation Act is unconstitutional in that it provides that administrative or executive officers of the United States may determine a case or controversy to which the United States is a party, contrary to the provisions of Article III, Sections 1 and 2, of the Constitution of the United States.

32. The Court below erred in not holding the Renegotiation Act is unconstitutional in that it deprives a person of a jury trial in a cause which the United States of America purports to have against such person, when the amount involved exceeds Twenty ($20.00) Dollars.

[fol. 657] 33. The Court below erred in not holding the Renegotiation Act unconstitutional in so far as the effect of the provisions of Sections 403 (c) (2) and 403 (c) (1) are concerned in that said Sections authorize administrative or executive officers of the Government of the United States to take a person's property before the administrative process by which the amount due to the United States from such person has been finally determined; in violation of the due process clause of the Fifth Amendment.

34. The Court below erred in not holding the Renegotiation Act unconstitutional because it precludes in its terms any opportunity by the plaintiff to have a constitutionally organized court determine whether its property has been taken without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

35. The Court below erred in not holding the Renegotiation Act unconstitutional as violative of the Fifth Amendment to the Constitution of the United States in that it purports to authorize the taking of property which

had vested in the plaintiff prior to the enactment of the Renegotiotion Act.

36. The Court below erred in dismissing the Amended and Supplemental Complaint without determining the questions of the constitutionality of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944.

37. The Court below erred in dismissing the Amended and Supplemental Complaint without determining whether the proceedings taken under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as [fol. 658] amended prior to February 23, 1944, by the delegate of the Secretary of War, were arbitrary and capricious and not within the powers delegated to the Secretaries as defined in said Act.

38. The Court below erred in not holding Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, to be in violation of the Fifth Amendment to the Constitution of the United States in that it authorizes appointive executive or administrative officers of the United States to take plaintiff's property without paying just compensation therefor.

39. The Court below erred in not holding Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, to be in violation of the Fifth Amendment to the Constitution of the United Staates in that it permits the taking of plaintiff's property without due process of law.

40. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, is unconstitutional in that it violates Article I, Section 1, of the Constitution of the United States by permitting executive or administrative officers to exercise legislative power vested exclusively in The Congress of the United States.

41. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, is unconstitutional in that by its terms it enables or per-

mits executive or administrative officers of the United States to exercise power to make laws, which power is exclusively vested in The Congress of the United States under the provisions of Article I, Section 1, of the Constitution of the United States.

[fol. 659] 42. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, is unconstitutional in that it does not contain sufficient or adequate standards for the guidance of the Secretaries as described in such Act, to carry out the mandate of The Congress of the United States embraced in such Act.

43. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, is unconstitutional in that it enables or permits executive or administrative officers of the United States to determine that a liability on the part of a person to the United States exists, the amount of such liability, and authorizes executive or administrative officers to collect the amount of such liability as so determined, functions which are exclusively vested in the judicial branch of the United States by the provisions of Article III, Sections 1 and 2, of the Constitution of the United States.

44. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, is unconstitutional in that it provides that administrative or executive officers of the United States may determine a case or controversy to which the United States is a party, contrary to the provisions of Article III, Sections 1 and 2, of the Constitution of the United States.

45. The Court below erred in holding that the suit was prematurely brought because plaintiff has a remedy in the Court of Claims.

46. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appro- [fol. 660] priation Act, 1942, as amended prior to February 25, 1944, is unconstitutional in that it deprives a person of a jury trial in a cause which the United States of

America purports to have against such person, when the amount involved exceeds Twenty ($20.00) Dollars.

47. The Court below erred in not holding that Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, together with Section 403(e)(2) of the Renegotiation Act, unconstitutional, in so far as the effect of such Acts construed together as concerned, in that said Sections authorize administrative or executive officers of the United States to take plaintiff's property before the administrative process by which the amount due to the United States from such person has been finally determined, in violation of the due process clause of the Fifth Amendment.

48. The Court below erred in not holding Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, unconstitutional, because it precludes in terms, any opportunity by the plaintiff to have a constitutionally organized court determine whether its property has been taken without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

49. The Court below erred in not holding Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, unconstitutional, as violative of the Fifth Amendment to the Constitution of the United States in that it purports to authorize the taking of property which has been vested in the plaintiff prior to the enactment of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.

50. The Court below erred in not holding the Renegotiation Act and Section 403 of the Sixth Supplemental [fols. 661-711] National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, to be unconstitutional in that each of said Acts enables executive and administrative officers of the United States to take plaintiff's property before plaintiff had any opportunity of any hearing in respect of the amount due, in violation of the Fifth Amendment to the Constitution of the United Stataes.

51. The Court below erred in not holding the Renegotiation Act and Section 403 of the Sixth Supplemental

National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, to be arbitrary, capricious unequal in operation and in result in violation of the Fifth Amendment to the Constitution of the United States in that it purports to enable the taking of plaintiff's property without due process of law.

52. The Court below erred in dismissing the Amended and Supplemental Complaint without determining that the provisions of the Renegotiation Act and Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended prior to February 25, 1944, were unconstitutional as violative of the Fifth Amendment to the Constitution of the United States in so far as such Acts purport (a) to authorize administrative or executive officers to revise contracts in existence prior to the enactment of either of such laws, and (b) to revise contracts which had been fully performed by plaintiff prior to enactment of either Act.

53. The Court below erred in not remanding the complaint to the District Court of one judge to determine whether the actions taken by the War Contracts Price Adjustment Board came within the purview of the Renegotiation Act so that such Court could grant appropriate relief.

Respectfully submitted, Gallagher, Rinaker, Wilkinson & Hall, Arthur R. Hall, Attorneys for Plaintiff-Appellant.

Copy received 3/29/46, John F. Sonnett, Attorney for Defendants.

[fol. 712] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

STIPULATION WITH RESPECT TO THE RESIGNATION OF CERTAIN DEFENDANTS AND THE APPOINTMENT OF SUCCESSORS—Filed March 30, 1946.

It is stipulated, but solely for the purpose of this stipulation, that:

1. W. John Kenny, Gladding B. Coit and Carman B. Blough have resigned from the War Contracts Adjustment Board and that E. D. Dougal, Jr., George P. Luce and Norman L. Burton have been appointed to and are now serving as members of said Board.

2. That Henry L. Stimson has resigned as Secretary of War and Robert P. Patterson has been appointed Secretary of War and is now acting as Secretary of War, and as Secretary under the provisions of the Renegotiation Act.

3. Robert P. Patterson has resigned as Under Secretary of War and Kenneth G. Royall has been appointed Under Secretary of War, and is now acting as Under Secretary of War and as delegate of the War Contracts Price Adjustment Board and as delegate of Robert P. Patterson, Secretary of War.

4. In the view of the plaintiff there is substantial need for continuing and maintaining this proceeding.

[fol. 713] 5. This action may be continued as an action against the aforesaid successors in office and an order may be entered substituting the said successors in office in lieu of their predecessors, the stipulation and the order, however, to be without prejudice to the claim of defendants, including the substituted defendants, that this action is in reality one against the United States which has not consented to be sued, and without prejudice to the claim of the plaintiff that it is an individual action.

Francis W. Hill, Jr., Attorney for Plaintiff, John F. Sonnett, Assistant Attorney General, Attorney for Defendant.

[fol. 714] IN UNITED STATES DISTRICT COURT

[Title omitted.]

[File endorsement omitted.]

ORDER FOR SUBSTITUTION OF PARTIES—Filed April 2, 1946

The Court finding from the stipulation of the parties that the defendants, W. John Kenny, Gladding B. Coit and Carman B. Blough, have resigned as members of The War Price Adjustment Board and that E. D. McDougal, George P. Luce and Norman L. Burton have been appointed to and are now serving on said Board, and that the defendants Henry L. Stimson, described as Secretary of War, and Robert P. Patterson, described as Under Secretary of War, have been substituted in office respectively by Robert P. Patterson and Kenneth C. Royall, and that there is substantial need for maintaining and continuing this action, it is, this 2nd day of April

Ordered That E. D. McDougal, George P. Luce, Norman L. Burton, Robert P. Patterson, described as Secretary of War, and Kenneth C. Royall, described as Under Secretary of War, be and they hereby are, substituted as defendants, described as in their respective positions, for the original defendants, W. John Kenny, Gladding B. Coit, Carman B. Blough, Henry L. Stimson, Secretary of War, and Robert P. Patterson, Under Secretary of War.

This Court approves the agreement of the parties that this Order and its entry shall be without prejudice to the claim of defendants that this action is in reality one against the United States which has not consented to be sued and without prejudice to the claim of plaintiff that it is an individual action.

Presented by France W. Hill, Jr.

Henry W. Edgerton (s), Justice.

[fol. 715] Jennings Bailey (s), Justice, James M. Proctor (s), Justice.

Consented to: John F. Sonnett (s), Assistant Attorney General.

[fol. 716] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

ORDER FOLLOWING APPEAL—Filed April 3, 1946

It appearing to the court that the plaintiff, Aircraft & Diesel Equipment Corporation, has filed its petition for appeal to the Supreme Court of the United States, and has filed therewith (a) its assignment of errors and (b) its statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Rules of the Supreme Court of the United Stataes, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the order in question.

It is ordered that the appeal prayed for be the same is hereby allowed and granted to the Supreme Court of the United States from the order rendered in this cause on the 5th day of March, 1946; and it is

Further ordered that the clerk of said court shall prepare and certify a transcript of the record, proceedings and order in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within 30 days of this date; and it is

Further ordered that the plaintiff give a bond with good and sufficient security in the sum of Two Hundred and Fifty dollars ($250.00), that it as appellant shall prosecute its appeal to effect, and answer all costs if it fails to [fol. 717] make its appeal good.

And it appearing that the plaintiff, Aircraft & Diesel Equipment Corporation, plaintiff, has filed herein its "Motion To Enjoin Defendants Pending Appeal" and its verified "Petition For Injunction Pending Appeal", pursuant to Rule 62 of the Rules of Civil Procedure for the District Courts of the United States, therein praying an injunction restraining the defendants and each of them from directing customers of the plaintiff to withhold for the account of the United States any money due plaintiff from its said customers, and likewise restraining the defendants and each of them from directing customers of the plaintiff to pay into the treasury of the United States any money due plaintiff from said customers, pursuant to the provisions of The Renegotiation Act, pending the

hearing on appeal from the order of this court entered March 5, 1946, denying the plaintiff's motion for interlocutory injunction as prayed in the Amended and Supplemental Complaint and entering summary judgment in favor of the defendants and dismissing plaintiff's cause of action.

And the court having examined said "Petition for Injunction Pending Appeal" and the Amended and Supplemental Complaint filed herein, together with exhibits attached thereto, and made a part thereof, and having heard the arguments of counsel for and in opposition to the allowance of said injunction pending appeal, and the court having satisfied itself that the fact and circumstances shown to exist, warrant and justify the issuance of such injunction pending appeal upon the filing of a good and sufficient bond in the sum of $100,000 conditioned as required by the Rules of this court, and in form as approved by this court.

[fols. 718-734] It is ordered by the court that the defendants and each of them are hereby restrained from directing customers of the plaintiff to withhold for the account of the United States any moneys due plaintiff from said customers and they are likewise restrained from directing customers of the plaintiff to pay into the Treasury of the United States any moneys due plaintiff from said customers, pending a decision on the appeal in the cause this day allowed and the return of the mandate thereon, or until further order of this Court; provided the plaintiff shall file bond in this cause within twenty days from the date hereof in the sum of $100,000 and in the form approved by this Court.

Entered this 3rd day of April, 1946.

Henry W. Edgerton (s), Jennings Bailey (s), James M. Proctof (s), Judges.

Seen: John F. Sonnett, Assistant Attorney General.

A true copy. Test: Charles E. Stewart, Clerk, By R. Page Belew, Deputy Clerk.

[fol. 735] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY, AND A DESIGNATION OF THE PARTS OF THE RECORD WHICH IT DEEMS NECESSARY FOR A CONSIDERATION THEREOF, FILED PURSUANT TO RULE 13, PARAGRAPH 9, OF THE REVISED RULES OF THIS COURT—Filed May 1, 1946

Comes now Aircraft & Diesel Equipment Corporation, the Appellant in the above entitled cause, and states that the points upon which it intends to rely in this case are as follows:

I

The doctrine of exhaustion of administrative remedies upon which the decision and order of the District Court is partially based has no application where (a) the law from which the administrative body derives its authority is unconstitutional, or (b) where remedy is doubtful or the procedure is defective, or (c) where unreasonable delay has been encountered before the administrative agency and the result of such delay constitutes and threatens irreparable injury.

II

[fol. 736] The District Court in applying the doctrine of exhaustion of administrative remedies has overlooked the facts that (a) the plaintiff has for each of the years 1942 and 1943 filed in apt time, its petition for redetermination in The Tax Court of the United States where said petitions are now pending, and (b) that $204,000 of plaintiff's money was taken as excessive profits less tax adjustments, for the year 1942 *after* the petition for redetermination for the year 1942 was filed in The Tax Court and while said petition was and is still pending, and (c) that defendants propose to take an additional $270,000 for the year 1943 *after* the petition for redetermination for the year 1943 had been filed in The Tax Court and while said petition was and is still pending.

III

In holding that this suit attacking the constitutionality of the renegotiation acts is premature in that The Tax Court may find that plaintiff realized no excessive profits

and, therefore, the constitutionality of the acts are immaterial to plaintiff, the District Court has overlooked the fact that under the acts plaintiff's property has been taken and additional property will be taken pursuant to such unconstitutional acts before any determination has been made by The Tax Court as to the validity of such acts (if such determination can be made there), or as to the amount of excessive profits, if any, realized by the plaintiff.

IV

In holding that equity has no jurisdiction for the reason that plaintiff has an adequate remedy at law by (a) suits against its debtors, and (b) in the Court of Claims for all such sums of which plaintiff has been deprived, the District Court overlooked the fact that to recover $270,000 the plaintiff would be required to bring twenty (20) or more suits in various cities and states against its customers whose good will plaintiff desires to retain, that such action would necessitate the employment of attorneys in each of such places and the attendance in such localities of plaintiff's officers as witnesses; and the court has likewise overlooked the fact that, unlike the Royalty Adjustment Act, the Renegotiation Act affords no access to the Court of Claims, and by the provisions of Section 403(e)1 the jurisdiction of The Tax Court is made exclusive and its determination final and not subject to review by any court or agency.

V

A court of equity will grant relief where the remedy at law is not as complete, practical and efficient as that which the equity could afford.

[fol. 737]

VI

A court of equity will grant relief pending a determination of the validity of a law where the failure to grant such relief will result in depriving plaintiff of its property without any adequate means of redress in the event the law under which the property is taken is subsequently determined to be invalid.

VII.

The allegations of the complaint, which are admitted by the motion to dismiss, show that the denial of the injunction would result in irreparable injury to the plaintiff in that it would (a) compel plaintiff to sue numerous customers in various cities and states with the attendant loss of good will and at great loss of time and expense, (b) compel plaintiff to risk the subsequent impairment of the credit of its debtors, and (c) impair plaintiff's working capital.

VIII

If both acts shall be determined constitutional, an equity court has jurisdiction to and should restrain the taking of plaintiff's property until The Tax Court shall have made its determination of the alleged excess profits realized by the plaintiff.

IX

A statute which purports to authorize an administrative agency or agencies to assert a claim for money (not taxes) against a citizen and to take the property of the citizen in payment of that claim, prior to the completion of the determination of the administrative agency, when the delay of the agency is not due to any failure to act of the citizen, is unconstitutional and void.

X

Both Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended, and the Renegotiation Act are unconstitutional and void in that both Acts, contrary to the provisions of Article I of the Constitution of the United States of America, purport to empower administrative or executive officers to exercise legislative power vested exclusively in the Congress of the United States.

XI

Both Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended, and the Renegotiation Act are unconstitutional and void in that both of said acts, contrary to the provisions of Article III, [fol. 738] Sections 1 and 2 of the Constitution of the United States vesting such functions exclusively in the Judicial Branch of the Government, purport to permit

executive or administrative officers of the United States to determine a liability on the part of a person to the United States (not for taxes), and to collect the amount so determined.

XII

Both Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the Renegotiation Act are unconstitutional and void in that said acts, contrary to the provision of Article VII of the Constitution of the United States, purport to deprive a person of a jury trial in a cause in which the United States asserts a claim in excess of Twenty Dollars ($20.00).

XIII

Both Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended, and the Renegotiation Act are unconstitutional and void in that both acts, contrary to the Fifth Amendment of the Constitution of the United States, purport to authorize a taking of private property without paying just compensation therefor, and without due process of law.

XIV

Both Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the Renegotiation Act are unconstitutional and void in violation of the Fifth Amendment of the Constitution of the United States in that both acts purport to authorize the taking of private property which had vested in the plaintiff prior to the enactment of said acts, without just compensation and without due process of law.

XV

The Renegotiation Act purports to act retroactively and by such action to take property without just compensation or due process of law in that said act, enacted February 25, 1944, purports to be applicable to all amounts received or accrued after June 30, 1943. Plaintiff's fiscal year ended November 30, 1943. All sales in that year were made more than two months before the enactment of the Renegotiation Act. The doctrine of anticipation of legislation sometimes applied to tax laws with retroactive effect has no application here.

XVI

The first act (Section 403 of the Sixth Supplemental National Defense Act) is unconstitutional and void in that it purports to act retroactively and to take property of the plaintiff without the payment of just compensation and [fol. 739] without due process of law. This act was enacted April 28, 1942, and purports to subject to renegotiation all sales where delivery had not been made or full consideration made prior to that date. In determining the sales subject to renegotiation for the years 1942 and 1943, the determination of the Under Secretary of War (a) ignores the fact that receipts and collections were made prior to April 28, 1942, and includes said amounts so collected in the amounts alleged to be subject to renegotiation, (b) ignores the fact that a substantial portion of the sales in said years, 1942 and 1943, were made under contracts made prior to April 28, 1942. In the event the plaintiff's commitments alleged by it to be contracts were not legal contracts as is asserted by defendants but became contracts only upon the receipt of individual purchase orders, then a lesser portion, but still a substantial amount, of the sales made in the years 1942 and 1943 were upon such individual purchase orders made prior to April 28, 1942, all of which said sales were erroneously included as being subject to renegotiation in the years 1942 and 1943.

XVII

The provisions of Section 403(e)(1), purporting to vest in The Tax Court (a branch of the Executive Department) exclusive jurisdiction of renegotiation claims and to deprive the plaintiff of any form of judicial review is in violation of Sections 1 and 2 of Article III of the Constitution of the United States, Article VII of the Constitution of the United States and of the Fifth Amendment to said Constitution. The decision of the Supreme Court in *Macauley* v. *Waterman*, 66 S. Ct. 712, does not control this case since plaintiff here has sought relief through the administrative remedies provided by statute, and, while so doing, has been deprived of its property prior to action by the administrative agency.

Appellant further states that the only parts of the record as filed in this court deemed necessary to be printed

for the consideration of the points set forth above, are as follows:

	Title of Paper	Record Page
(1)	Title Page.	1
(2)	Affidavit of B. Ch. Kelleher filed June 18, 1945.	246-252
(3)	Order of Court granting leave to file Amended and Supplemental Complaint, entered June 18, 1945.	253
(4)	Amended and Supplemental Complaint, including Exhibits A to E, both inclusive, and excluding Exhibit F filed July 2, 1945.	254-293
[fol. 740]		
(5)	Affidavits of B. Ch. Kelleher filed July 2, 1945, omitting exhibits.	332-339; 341-347; 408-415
(6)	Stipulation, filed July 18, 1945, that affidavits and exhibits be made a part of the Amended and Supplemental Complaint.	626
(7)	Motion of defendants to dismiss and for summary judgment without exhibits.	92, 93
(8)	Opinion of the Court, filed September 28, 1945	628-635
(9)	Order and Judgment, dismissing the Amended and Supplemental Complaint entered March 5, 1945.	640
(10)	Petition for Injunction pending appeal, filed March 11, 1946.	642-650
(11)	Petition for Appeal, filed March 29, 1946.	651
(12)	Order Allowing Appeal, entered April 3, 1946.	716-718

Dated this — day of — A.D. 1946.

Earl B. Wilkinson, Arthur R. Hall, Samuel W. Witwer, Jr., J. Alfred Moran, 231 South LaSalle Street, Chicago, Illinois, Francis W. Hill, Jr., Woodward Building, Washington, D. C., Counsel for Appellant.

[fol. 741] Due service and receipt of a copy of the foregoing statement of points to be relied upon and designa

tion of the parts of the record to be printed is hereby acknowledged, this 1st day of May, A.D. 1946.

John F. Sonnett, By Walker W. Lowry, Counsel for Appellees.

[fol. 741a] [File endorsement omitted.]

[fol. 742] IN THE SUPREME COURT OF THE UNITED STATES
APPELLEES' DESIGNATION OF THE PARTS OF THE RECORD WHICH THEY DEEM MATERIAL FOR THE CONSIDERATION OF THE POINTS ON WHICH APPELLANT INTENDS TO RELY—Filed May 10, 1946

The Solicitor General on behalf of the appellees herein, pursuant to Rule 13, paragraph 9 of the rules of this court, designates the following as additional parts of the record which he thinks material for consideration of the points upon which the appellant states it intends to rely:

	Description	Record Page
(1)	Motion for preliminary injunction.	82-83
(2)	Patterson affidavit and exhibits.	94-163
(3)	Hensel affidavit.	164-230
(4)	Hirsch affidavit.	231-232
(5)	Wofford affidavit.	233-234
(6)	Attached statement and exhibits.	235-244
(7)	Transmittal letter of determination of excessive profits.	245
[fol. 743]		
(8)	Exhibit F to amended complaint.	294-331
(9)	Recapitulation.	340
(10)	Exhibits R-1 thru R-16 and R-x.	348-407
(11)	Exhibits B-1 thru B-15 and Exhibit B-x attached to Kelleher affidavit of June 29, re General Motors Corporation (Buick)	416-465
(12)	Kelleher affidavit of June 29, 1945 re Chevrolet Motor and Axle, and Exhibits C-1 thru C-10 and Exhibit C-x.	466-510
(13)	Kelleher affidavit of June 29, 1945 re Allison Division, and Exhibits A-1 thru A-12 and Exhibit A-x.	511-557

(14) Kelleher affidavit of June 29, 1945 re U. S. Navy Department, and Exhibits N-1 and N-x. 558-567

(15) Kelleher affidavit re Woodward Governor Co. and Exhibits W-1 thru W-7 and Exhibit W-x. 568-586

(16) Kelleher affidavit re Hudson, Westinghouse, Studebaker, Packard Electric, and Exhibit 1, 2, and 3. 587-625

(17) Application for and designation of three-judge court. 636-639

(18) Order for substitution of parties. 714-715

(19) Order allowing appeal. 716-718

Dated this 10th day of May, 1946.

J. Howard McGrath, Solicitor General.

[fol. 743a] [File endorsement omitted.]

[fol. 744] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—Filed May 27, 1946.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed on cover: File No. 50,886, District of Columbia, D. C., U. S., Term No. 95. Aircraft & Diesel Equipment Corporation, Appellant, vs. Maurice Hirsch, E. D. McDougal, John R. Paul, et al. Filed May 1, 1946. Term No. 95 O.T. 1946.